

# **Unit Titles Act 2005**

**COOK ISLANDS**

**No. 17 of 2005**

## **UNIT TITLES ACT 2005**

Examined and certified by:

Clerk of Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to this Act this 14th day of October 2005.

**SIR F.GOODWIN, KBE**

Queen's Representative

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## 2005, No. 17

### An Act to establish unit titles

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled and by the authority of the same, as follows:

**1. Short Title, commencement, affect and application** - (1) This Act may be cited as the Unit Titles Act 2005.

(2) This Act shall come into force on the date that it is assented to by the Queen's Representative.

(3) Nothing in this Act shall affect the rights of any person in relation to that person's interest in customary land and right of succession to native freehold land pursuant to Parts XIV and XVI of the Cook Islands Act 1915.

(4) This Act shall have application only in respect of the islands described in the Schedule hereto and to such other islands as may from time to time be prescribed by Acts.

**2. Interpretation** - (1) In this Act, unless the context otherwise requires, -

"accessory unit" - means a unit that is designed for use with any principal unit (whether as a garden, garage, car parking space, storage space, swimming pool, laundry, stairway, passage, or other like purpose) and that is shown on a unit plan as an accessory unit;

"approved valuer" means a valuer approved by the Registrar;

"body corporate" means the proprietor or proprietors for the time being of all the units comprised in the unit plan and established under section 13 of this Act;

"Building Controller" means the building controller appointed under section 6 the Building Controls and Standards Act 1991;

"chief surveyor" means the person appointed as such by the head of the appropriate Ministry;

"common property"- means common property within the meaning of paragraph (c) of section 3;

"Court" and "High Court" means the High Court of the Cook Islands;

"Leases Approval Tribunal" means the Tribunal established by the Leases Restrictions Act 1976;

"owner" means the holder of an estate as lessee;

"principal unit" means a unit other than an accessory unit;

"Property Law Act" means the Property Law Act 1952 of New Zealand, as applied in the Cook Islands;

"proprietor" means the holder of a unit title;

"Register of Titles" means the Register of Titles administered by the Registrar and upon which is recorded transactions for each parcel of land;

"National Building Code" means the building code prescribed pursuant to section 4 of the Building Controls and Standards Act 1991;

"Registrar" means the Registrar of the Court;

"unit"- in relation to any land means a part of the land consisting of a space of any shape situated below, on, or above the surface of the land, or partly in one such situation and partly

in another or others, all the dimensions of which are limited, and that is designed for separate ownership;

"unit plan" means a plan describing the matters set out in section 3 and confirmed by the Court under section 4.

(2) In this Act, the term lease includes a sublease, and the terms lessor and lessee have corresponding meanings.

## **PART 1** **STRATUM ESTATES**

**3. Subdivision of land into units** - The owner of an estate as lessee of a parcel of land may, if the terms of the lease expressly so permit, subdivide all or part of that parcel into -

- (a) two or more principal units; and
- (b) such number of accessory units (if any) as the owner may wish; and
- (c) common property, being so much of the land as is not comprised in any unit.

**4. Subdivision effected when plan confirmed** - (1) The subdivision of land so as to provide for units shall be effected by an order of confirmation of the Court under this Act of a plan describing the units in their relation to a building or buildings already erected on the land.

(2) An order of confirmation of a unit plan shall have the effect of creating in each unit a stratum estate in leasehold which shall comprise -

- (a) the estate as lessee in the unit determinable in accordance with sections 49 and 50; and
- (b) the undivided share in the estate as lessee in the common property to which the proprietor of the unit is entitled by virtue of section 10; and
- (c) the undivided share in the estate as lessee in all the units to which the proprietor of the unit is contingently entitled by virtue of section 49.

(3) Upon the creation of a stratum estate in leasehold in a unit, that estate may devolve or be transferred, leased, mortgaged, or settled, and any transfer, lease, mortgage, or settlement shall have the same effect, as if the stratum estate were an interest in land under a lease; but the interest as lessee in the land or any part of the land shall not be capable of devolving or being dealt with in any way, and none of the component parts of a stratum estate in leasehold shall, except as provided in section 10, be capable of devolving or being dealt with independently of the others.

(4) Notwithstanding anything in subsection (3), any proprietor of a unit may grant an easement over the unit, but only with the consent of every proprietor and every mortgagee of all the other units described in the unit plan.

(5) When a unit is being transferred, leased, mortgaged, settled, or otherwise dealt with pursuant to subsection (3), it shall be described in the instrument evidencing the transaction as " Unit No..... being that unit described on Unit Plan No....."

deposited with the Registrar and the Chief Surveyor and confirmed by the High Court on ....[date]".

(6) Application for an order of confirmation of a unit plan shall be made to the Court by the lessee of the land to which the plan relates.

(7) Upon confirmation of a unit plan, -

(a) the Court shall allocate to the unit plan the next consecutive number from the unit plan it last confirmed;

(b) the lessee shall cause a duplicate of the unit plan to be deposited with the Registrar and the Chief Surveyor together with a sealed order of confirmation;

(c) the Registrar shall record the order of confirmation and unit plan number in the Register of Titles of the land to which the plan relates.

**5. Restrictions on confirmation of plan** - (1) No unit plan shall be confirmed -

(a) until it complies with all regulations as to survey and has been approved by the Chief Surveyor;

(b) unless the person holding a mortgage or charge affecting the land or any part of it has consented in writing to it being confirmed;

(c) unless a certificate of approval has been given by the Building Controller to the effect that every building shown on the plan has been erected, and all other development work has been carried out, to the extent necessary to enable all the boundaries of every unit and the common property shown on the plan to be physically measured;

(d) unless the Court is satisfied as to the unit entitlement fixed pursuant to section 7(1);

(e) unless the Court is satisfied through the Leases Approval Tribunal that the landowners understand the nature and extent of the development.

(2) The approval of the Chief Surveyor and the Building Controller of a unit plan shall have effect of -

(a) approving any survey definition incorporated in the plan;

(b) approving for the purposes of this Act, the definition of all the units and common property shown on the plan;

(c) rendering the plan the property of the Crown.

**6. Further provisions relating to Building Controller's certificate** - (1) The Building Controller shall not refuse to give a certificate in respect of any unit plan under section 5(1)(c) of this Act except on one or more of the following grounds -

(a) that any building shown on the plan has not been erected, or that any other development work has not been carried out, to the extent necessary to enable all the boundaries of every unit and the common property shown on the plan to be physically measured;

(b) that any building on the land has been erected in such a place in relation to any boundary or to a height of not more than three storeys as to contravene the National Building Code;

(c) that any building or any other part of the whole development contravenes the National Building Code in any other manner to such an extent that alterations are required that may affect the location or the boundaries of any unit or of any part of the common property shown on the plan.

(2) When the Building Controller has given a certificate in respect of any unit plan under section 5(1)(c), and that plan has been confirmed under this Act, the Building Controller, notwithstanding any enactment or rule of law to the contrary, shall have no power to require any alteration to any building or any other part of the whole development that may affect the location or the boundaries of any unit or of any part of the common property shown on the plan, but may otherwise pursue any remedies (including the prosecution of any person) in respect of any non-compliance with the Building Controls and Standards Act 1991 or the National Building Code.

(3) The Building Controller, and every employee or agent of the Building Controller shall not be under any civil or criminal liability in respect of the giving of a certificate under section 5(1), unless he has acted in bad faith.

**7. Unit entitlement** - (1) For the purpose of determining the matters specified in subsection (3), before a unit plan is confirmed there shall be assigned to every principal unit and every accessory unit a unit entitlement, to be fixed by an approved valuer, on the basis of the relative value of the unit in relation to each of the other units on the unit plan.

(2) Subject to section 20(5)(d) and section 48(4), no change shall be made in the unit entitlement of any unit after the unit plan is confirmed.

(3) The matters referred to in subsection (1) are -

- (a) the proprietor's share in the common property in accordance with section 10;
- (b) the extent of the proprietor's liability for damages and costs under section 15;
- (c) the extent of the proprietor's obligation under section 16 in respect of contributions levied by the body corporate, and of his rights under that section on a distribution of any surplus money or personal property;
- (d) the extent of the proprietor's obligation for payment of rent and other money under section 27;
- (e) the proprietor's voting rights on a poll conducted in accordance with prescribed rules of the body corporate;
- (f) subject to section 50(5), the proportion in which money (if any) received or held by the body corporate for distribution among the proprietors is to be distributed among them in accordance with section 49(6); and
- (g) The share in the leasehold estate which is to vest in the proprietor under section 49(7) upon the cancellation of the unit plan.

**8. Existing easements affecting land** - (1) The confirmation of a unit plan shall have no effect on any easement or restriction as to user which the land to which the plan relates is subject, or on any easement or restriction as to user which is appurtenant to the land to which the plan relates.

(2) The Court shall require all such easements and restrictions as to user to be recorded (by diagram, words, or otherwise) on the unit plan.

**9. Issue of certificate of title in respect of unit** - (1) On the confirmation of a unit plan, the Registrar shall -

(a) issue a certificate of title in the name of the lessee of the land to which the plan relates, for the stratum estate in leasehold in all of the units shown on the unit plan; and

(b) note on the Register of Titles for the land to which the unit plan relates and on the deed of lease an appropriate memorial that a certificate of title has been issued for the stratum estate in leasehold in all the units shown on the unit plan.

(2) Notwithstanding subsection (1)(a), the Registrar may, at the request of the lessee, issue a separate certificate of title for any principal unit, which certificate of title may also include one or more accessory units.

(3) A certificate of title shall be issued in duplicate the original of which shall be retained by the Registrar and both of which shall record -

(a) the unit plan number and principal unit number to which the certificate relates;

(b) any accessory unit or interest in it associated with the use of the principal unit;

(c) the proprietor of the principal unit;

(d) the unit entitlement;

(e) all easements and restrictions as to user;

(f) all dealings and other transactions affecting the principal unit from time to time.

(4) It shall not be necessary in any such certificate of title to mention the quantum of the undivided share in the common property to which the proprietor is entitled by virtue of section 10.

(5) To enable all dealings and other transactions affecting a principal unit to be recorded on the duplicate certificate of title the person having custody or control of that certificate shall produce it to the Registrar for that purpose.

(6) For the purposes of this Act, the Register of Titles and any matters required to be registered or entered on to the Register, may be kept by the Registrar in electronic form.

**10. Common property** - (1) The common property shall be held by the proprietors of all the units as tenants in common in shares proportional to the unit entitlement of their respective units but nothing in this subsection shall affect the interests among themselves as the proprietors of a stratum estate in leasehold in an individual unit.

(2) While the same person is proprietor of more than one unit, subsection (1) shall apply as if there were different proprietors for each of those units.

(3) The proprietors of all the units may, with the approval of the Leases Approval Tribunal, and subject to any restrictions imposed by the lease, body corporate or by the Leases Approval Tribunal, assign or sublease part of the common property or may grant

an easement over the whole or any part of it.

**11. Independent dealings with accessory units restricted** - (1) A certificate of title relating to an accessory unit shall not be issued except as part of a certificate of title relating to a principal unit.

(2) Subject to subsection (3), no accessory unit or any interest in it may be sold, leased, mortgaged, or otherwise disposed of or dealt with except as part of a sale, lease, mortgage, disposition, or other dealing which includes a principal unit or a corresponding interest in a principal unit and then only with the approval of the Leases Approval Tribunal, and subject to any restrictions imposed by the Leases Approval Tribunal.

(3) The proprietor of a principal unit included in the same certificate of title as an accessory unit may -

- (a) let the accessory unit on a weekly tenancy or on a tenancy determinable at the will of either of the parties by one month's notice in writing; and
- (b) transfer the accessory unit to the proprietor of a principal unit shown on the same unit plan.

(4) No principal unit which is for the time being included in the same certificate of title as an accessory unit (not being a certificate of title issued under section 9(1)(a)), and no interest in any such principal unit may be sold, leased, mortgaged, or otherwise disposed of or dealt with except as part of a sale, lease, mortgage, disposition, or dealing which includes the accessory unit or a corresponding interest in the accessory unit, as the case may be.

(5) If an accessory unit or any interest in it is transferred independently of a principal unit to a person who is the proprietor of a principal unit shown on the same unit plan, then, upon the transfer taking effect, -

- (a) the Registrar shall include the accessory unit or interest in it on the certificate of title for the principal unit of the proprietor to whom it is transferred; and
- (b) the accessory unit or interest in it shall become subject to all mortgages and charges then affecting the principal unit of the proprietor to whom it is transferred.

(6) Where an accessory unit or interest in it is for the time being included in the same certificate of title as a principal unit the accessory unit may not be transferred apart from the principal unit while it remains subject to any mortgage or charge.

(7) Any purported sale, lease, mortgage, disposition, or dealing with an accessory unit in contravention of subsection (2) or a principal unit in contravention of subsection (4) shall be void and of no effect.

(8) Nothing in subsection, (7) shall affect the devolution of any unit upon the death of the proprietor thereof to the executor or administrator of the deceased proprietor's estate.

**12. Incidental rights** - (1) The common property and each unit on a unit 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, oil, garbage, air, and all other services of whatsoever nature (including telephone, radio, and television services) over the land and every part thereof 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 unit plan shall, by virtue of this section, have as appurtenant thereto -

(a) 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 confirmation of the plan and enjoyed at that date; and

(b) a right to maintain overhanging eaves existing at the date of confirmation of the plan,

over the land and every part thereof.

(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 land other than the land to which the unit plan relates.

**13. Proprietors to constitute body corporate** - (1) On the confirmation of a unit plan the lessee of the land to which the plan relates shall become a body corporate and thereupon the stratum estate in leasehold for each of the units on the unit plan shall vest in the lessee.

(2) Thereafter the proprietor or proprietors for the time being of all the units comprised in the unit plan shall, by virtue of this Act, be the body corporate.

(3) The body corporate shall have the designation "Body Corporate (*the number of the unit plan*)".

(4) The body corporate shall have perpetual succession and a common seal.

**14. Actions by and against body corporate** - (1) The body corporate shall be capable of suing and being sued in its corporate name and of doing and suffering all that bodies corporate may do and suffer.

(2) Without restricting the generality of subsection (1), the body corporate may sue for and in respect of damage or injury to the common property caused by any person, whether that person is a unit proprietor or not.

**15. Liability in tort** - (1) Where any proceedings are brought in any Court in tort or in respect of an alleged breach of any statutory duty and it is required by law that the 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 body corporate shall be deemed to be the owner and the occupier of the common property, and any judgment which may be awarded to the plaintiff shall subject to subsection (3) be entered against the body corporate accordingly.

(3) Where the cause of action arose through the negligence or unauthorised act or omission of one or more of the proprietors or former proprietors of a unit, the body corporate may join that proprietor or those proprietors as co-defendants, and judgment may be given against the body corporate and such proprietor or proprietors jointly and severally.

(4) The amount of any judgment (including costs) given jointly and severally as provided in subsection (3) may be recovered as a debt by the body corporate from the proprietor or proprietors against whom judgment is given.

(5) Where the defendant in any proceedings to which this section applies is the body corporate, 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 body corporate of the full amount awarded by way of judgment.

(6) The liability of each proprietor under subsection (5) shall be limited to an amount equal and payable by the body corporate in accordance with the judgment, less the amount which the body corporate can recover under any policy of insurance, and less any amount paid by a proprietor against whom judgment is given pursuant to subsection (3) or recovered from him pursuant to subsection (4), as is proportionate to the unit entitlement of his unit.

(7) Any amount recovered from a proprietor, pursuant to subsection (4), after satisfaction of the judgment by the body corporate, shall (subject to any right of set-off) be refunded to those proprietors who have made a payment under this subsection, in proportion to the amount of their payments.

(8) Where any proprietor pays to the plaintiff any sum which he is liable to pay under subsection (6), he shall be entitled to recover the same as a debt in an action from the body corporate.

(9) Nothing in subsection (8) shall prevent the body corporate in such an action from claiming any sum due to it from that proprietor under the provisions of this Act by way of set-off.

(10) If the body corporate at 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.

## **16. Duties of body corporate - (1) The body corporate shall -**

(a) subject to the provisions of this Act, carry out any duties imposed on it by the rules of the body corporate as may be prescribed;

- (b) insure and keep insured all buildings and other improvements on the land to the replacement value thereof (including demolition costs and architect's fees) against fire, flood, explosion, wind, storm, hail, snow, aircraft and other aerial devices dropped therefrom, impact, riot and civil commotion, malicious damage caused by burglars, and earthquake in excess of indemnity value;
- (c) effect such other insurance as it is required by law to effect or as it may consider expedient;
- (d) subject to sections 49 and 50, forthwith apply insurance money received by it in respect of damage to any building or improvements so far as the rebuilding or reinstatement may lawfully be effected;
- (e) pay the premiums in respect of any policies of insurance effected by it;
- (f) keep the common property in a state of good repair;
- (g) comply with any notice or order duly served on it by any competent government or local authority or public body requiring repairs to, or work to be performed in respect of, the land or any building or improvements thereon;
- (h) subject to this Act, control, manage and administer the common property and do all things reasonably necessary for the enforcement of the rules;
- (i) do all things reasonably necessary for the enforcement of and compliance with the deed of lease under which the land is held;
- (j) do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section.

(2) The body corporate shall also -

- (a) establish and maintain a fund for administrative expenses sufficient in the opinion of the body corporate for the control, management, and administration of the common property, and for the payment of any insurance premiums, rent, and repairs and the discharge of any other obligations of the body corporate;
- (b) determine from time to time the amounts to be raised 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 body corporate 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 body corporate shall be deemed to have an insurable interest in all the buildings and other improvements on the land.

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

**17. Powers of body corporate** - (1) Subject to the provisions of this Act, the body corporate 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 its rules.

(2) The body corporate may appoint a manager on such terms as it may unanimously resolve to carry out the responsibilities and duties imposed on it by this Act and by its rules.

(3) The appointment of a manager and the terms and conditions upon which the appointment is held shall be recorded in a management agreement and shall be binding upon each and every proprietor for the time being who shall hold his unit subject to any restrictions and powers affecting it and contained in the management agreement.

**18. Dealings affecting the common property** - An instrument evidencing an assignment, sublease, or grant of easement affecting the common property, or land that is to become part of the common property, may be executed by the body corporate, if the assignment, sublease, or grant has been approved by unanimous resolution of the body corporate and by the Leases Approval Tribunal.

**19. Transfers of common property** - (1) Where the whole or any part or parts of the common property is assigned or subleased, the body corporate shall cause a new unit plan to be prepared which shall be deposited with the Registrar and the Chief Surveyor under the same number as, and in substitution for, the existing unit plan, and shall show the effect of the assignment or sublease to satisfaction of the Chief Surveyor.

(2) An assignment or sublease of the whole or any part or parts of the common property shall be of no effect until-

- (a) the written consent of every mortgagee and charge holder having an interest in the land comprised in the assignment or sublease is obtained; and
- (b) the approval of the Leases Approval Tribunal has been given.

(3) Upon an assignment or sublease of the whole or any part or parts of the common property taking effect-

- (a) the Registrar shall cause an appropriate memorial relating to the assignment or sublease to be noted on the new unit plan and in the Register of Titles for the land; and
- (b) the land comprised in the assignment or sublease shall, subject to the instrument evidencing the assignment or sublease, be conveyed free from any incidental rights existing over the land by virtue of section 12.

(4) Nothing in this section shall restrict section 21.

(5) The foregoing provisions of this section shall apply to every case where any common property is taken by warrant pursuant to section 357 of the Cook Islands Act 1915 or by proclamation pursuant to sections 606 or 607 of the Cook Islands Act 1915 and if the body corporate so requests by notice in writing, the Chief Surveyor shall, at the expense of the ministry, department or agency of the Crown benefiting from the warrant, prepare the new unit plan required by subsection (1) of this section.

**20. Additions to common property** - (1) Land which is acquired free of any mortgage, or

charge, by the proprietors of all the units shown on a unit plan, whether by name or general description may, with the approval of the Leases Approval Tribunal, be included in the subdivision to which the unit plan relates as part of the common property if the instrument evidencing the acquisition contains or has annexed thereto a unanimous resolution of the body corporate, that the land be so included.

(2) A unit (together with the undivided share in common property of the proprietor of that unit) which is acquired free of any mortgage or charge by the proprietors of all the other units shown on a unit plan, whether by name or general description may, with the approval of the Leases Approval Tribunal, be included in the subdivision to which the unit plan relates as part of the common property if the instrument evidencing the acquisition contains or has annexed thereto a unanimous resolution of the body corporate, that the unit be so included.

(3) Where an acquisition in accordance with subsection (1) or subsection (2) occurs the body corporate shall cause a new unit plan, to be prepared which shall be deposited with the Registrar and the Chief Surveyor under the same number as, and in substitution for, the existing unit plan, and shall show the effect of the acquisition to the satisfaction of the Chief Surveyor and shall have endorsed thereon a full amended schedule of unit entitlements.

(4) The deposit of a new unit plan under subsection (3) of this section shall have the effect of including the acquired land or unit as part of the common property. The undivided share of the proprietor of each other unit in the land or unit so included as part of the common property shall be held by him subject to the same terms, conditions, liabilities, and encumbrances as those on and subject to which he held the unit immediately before the deposit of the new unit plan, and subject in all respects to any instrument of mortgage, charge, lease, or sublease then affecting his unit as if the transferred land had been included in the instrument expressly.

(5) Where this section applies, the Registrar shall-

- (a) enter a memorial of the acquisition on the relevant certificate of title; and
- (b) enter on the new unit plan and on the supplementary record sheet an appropriate memorial relating to the acquisition; and
- (c) enter on the new unit plan a memorial of any easement that is appurtenant to the land shown on that plan or to which that land is subject; and
- (d) where the transfer is of a unit shown on the existing plan, record on that plan that the unit entitlement of that unit has been cancelled and that the aggregate unit entitlement shown on the plan has been reduced by the amount of the unit entitlement of that unit.

(6) Nothing in this section shall restrict section 21.

**21. Supplementary record sheets and new unit plans** - (1) The Registrar shall, as soon as it becomes necessary for the purposes of this Act to do so, set up in relation to any unit plan and body corporate, a supplementary record sheet on which he shall note appropriate memorials relating to -

- (a) all instruments which affect the whole or any part of the common property (independently of the units) to which the unit plan relates; and
- (b) all other matters which, in accordance with this Act, have to be noted thereon.

(2) Every supplementary record sheet shall be consecutively numbered and the number of the supplementary record sheet shall be entered on the unit plan or recorded copy thereof.

(3) In any case where, under any of the provisions of sections 19, 20 and 48 of this Act, a new unit plan is deposited under the same number as a previous unit plan -

- (a) the previous unit plan shall be filed under a different number;
- (b) the plan so deposited shall be noted so as to show clearly that it is in substitution for the earlier plan, and which earlier plan shall be identified by the number under which it is filed;
- (c) where any unit is described in any certificate of title or in any other instrument whatsoever by reference to a numbered unit plan in respect of any land, the reference shall be read as a reference to the plan for the time being deposited under that number in respect of that land.

(4) The Registrar shall -

- (a) whenever he issues a copy of a previous unit plan, indicate on the copy the number under which that plan has been refiled; and
- (b) whenever he issues a copy of any unit plan in respect of which a supplementary record sheet has been set up, indicate on the copy the reference number of that sheet.

## **PART 2**

### **SPECIAL PROVISIONS RELATING TO STRATUM ESTATES IN LEASEHOLD**

**22. Application of Part 2** - Upon the confirmation of a unit plan the provisions of this Part of this Act shall subject to section 1(3) of this Act apply.

**23. Preservation of lessor's interest** - (1) Neither the confirmation of a unit plan nor any dealing with any unit shown on a unit plan shall be or deemed to be a severance of the lessor's reversionary estate in the land.

(2) Subject to the provisions of this Part of this Act the lessor may deal with the reversionary estate in the land in all respects as if the unit plan had not been confirmed.

**24. Powers of body corporate in respect of lease** - (1) Subject to the provisions of this Part of this Act, upon the confirmation of a unit plan and until the cancellation thereof, the body corporate shall -

- (a) become and be entitled to sue and be sued as if it were the lessee under the lease and had all rights, powers, and privileges belonging or appertaining thereto; and
- (b) become and be subject to and liable for the same requirements and liabilities as those to which it would have been subject and liable if originally named in the lease as lessee of the land.

(2) A cause of action in respect of any breach by the lessor of any covenant, agreement, or stipulation expressed or implied in the lease and on the part of the lessor to be performed or observed, shall not lie at the suit of a proprietor of any unit or the proprietor of any estate or interest in any unit.

(3) Subject to section 28(2), no cause of action in respect of any breach by the proprietor of any unit or the proprietor of any estate or interest in any unit of any covenant, agreement, or stipulation expressed or implied in the lease and on the lessee's part to be performed or observed, shall lie at the suit of the lessor.

**25. Dealing with stratum estate in leasehold** - (1) The lessor's consent shall be required to any assignment (other than an assignment by way of mortgage), or transfer of a stratum estate in leasehold, provided that such consent shall not be unreasonably or arbitrarily withheld.

(2) For the purposes of subsection (1) a plan of redevelopment in accordance with the provisions of section 46 affecting any unit shall not be deemed to be a dealing with the stratum estate in leasehold in that unit.

(3) Section 106A of the Property Law Act shall apply to every assignment (other than an assignment by way of mortgage) or transfer of a stratum estate in leasehold.

(4) The approval of the Leases Approval Tribunal shall be required to an assignment or transfer of a stratum estate in leasehold.

(5) Nothing in this section shall preclude the right of a lessor to require the payment of the lessor's reasonable expenses in relation to the granting of consent to an assignment or transfer.

**26. Restrictions on surrenders and releases** - (1) After the confirmation of a unit plan and until the cancellation thereof, the following provisions shall apply -

(a) no proprietor of a unit shall surrender or agree to surrender the stratum estate in leasehold in that unit to the lessor, whether for valuable consideration or otherwise;

(b) the lessor shall not release or agree to release any unit or the common property or any part of the common property from the lease, whether for valuable consideration or otherwise

(c) where the proprietor of a unit purchases or acquires (whether by operation of law or otherwise) the lessor's reversionary estate in the land, that estate shall not merge with the stratum estate in leasehold in that unit;

(d) where the lessor purchases or acquires the stratum estate in leasehold in any unit (whether by operation law or otherwise) that estate shall not merge with the lessor's reversionary estate.

(2) Any purported surrender or release in contravention of paragraph (a) or paragraph (b) of subsection (1) shall be void and of no effect.

(3) This section shall not prohibit:

- (a) all the proprietors of all the units from dealing with the common property as lessee of that property;
- (b) all the proprietors of all the units from surrendering or agreeing to surrender to the lessor the stratum estates in leasehold in all the units;
- (c) the lessor from releasing or agreeing to release all the units together with the whole of the common property from the lease.

**27. Implied guarantee by unit proprietors** - (1) Subject to subsection (2), each proprietor for the time being of a unit shall be deemed to have guaranteed to the lessor -

- (a) the payment by the body corporate of the rent reserved under the lease on the days and in the manner prescribed therein; and
- (b) the performance or observance by the body corporate of the covenants, agreements, and stipulations contained or implied in the lease and on the lessee's part to be performed or observed.

(2) The liability of each proprietor under the guarantee deemed under subsection (1) to have been given in respect of any rent or other money payable under the lease to the lessor (including any money which has become payable by virtue of any breach by the body corporate of any covenant, agreement, or stipulation contained or implied in the lease) shall be -

- (a) limited to such proportion of the rent or other money so payable as the unit entitlement of that proprietor's unit bears to the aggregate unit entitlement of all the units shown on the plan; and
- (b) related only to rent and other money due or accruing while he is the proprietor of that unit.

(3) No neglect or forbearance of the lessor on endeavouring to obtain payment of the rent or other money payable under the lease or to enforce the performance or observance of the covenants, agreements, and stipulations contained or implied therein by the body corporate, and no time or other indulgence which may be given to the body corporate by the lessor shall release, exonerate, or in anyway affect the liability of any proprietor under subsection (1).

(4) Subject to subsection (5), where a proprietor pays to the lessor a sum which he is liable to pay under subsection (1), he may recover that sum from the body corporate as a debt due to him from the body corporate.

(5) Subsection (4) shall not prevent the body corporate from claiming any sum due to it from that proprietor under the provisions of this Act by way of set-off.

**28. Rights of forfeiture, re-entry, and distress** - (1) After the confirmation of a unit plan and until the cancellation thereof, -

- (a) no right of forfeiture or re-entry shall be exercisable by the lessor unless that right of forfeiture and re-entry has been exercised in accordance with the provisions of this section;

(b) no right of distress (whether for non-payment of rent or otherwise) shall be exercisable by the lessor otherwise than in accordance with subsection (5).

(2) Except in the case of forfeiture and re-entry for non-payment of rent, the right of forfeiture or re-entry for a breach of a covenant, condition or agreement in the lease shall not be enforceable until the lessor serves on the lessee, a notice -

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy requiring the lessee to remedy the breach;
- (c) in any case where the breach is not capable of remedy, requiring the lessee to pay compensation in money for the breach; and
- (c) giving the lessee a reasonable period of time within which to remedy the breach if it is capable of remedy or, if it is not capable of remedy, to pay compensation in money.

(3) Where the lease in respect of which such a notice has been served on the lessee has been mortgaged and the lessor has actual notice of the name and address of the mortgagee, the lessor shall forthwith after serving the notice on the lessee serve a copy of the notice on the mortgagee. Failure to comply with the provisions of this subsection shall not of itself prevent the exercise by the lessor of any right of re-entry or forfeiture.

(4) A lessor and a lessee may for the purposes of subsection (2) agree in writing as to what period of time is reasonable for the purposes of remedying any breach and failing such agreement, what constitutes "reasonable" in the circumstances may be determined by the High Court.

(5) Where the proprietor of any unit becomes liable under section 27(1) to pay to the lessor any sum (whether in respect of rent or other money payable under the lease) the lessor may, notwithstanding section 649 of the Cook Islands Act 1915, enforce payment of the sum in the same manner as he would have been able to if the sum had been rent in arrears from the date on which the liability of that proprietor to pay arose and that proprietor had been the lessee under the lease.

(6) Subsection (5) shall not entitle, empower, or authorise the lessor to forfeit or determine that proprietor's interest under the lease.

**29. Relief against forfeiture** - (1) Where pursuant to section 28 a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, or has re-entered, the lessee may, in the lessor's action (if any), or in any action brought by himself, or by proceeding otherwise instituted; apply to the Court for relief; and the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the circumstances of the case, may grant or refuse relief, as it thinks fit; and in case of relief may grant the same on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of injunction to restrain any like breach in the future, as the Court in the circumstances of each case thinks fit.

(2) Where any such relief as aforesaid is granted, the Court shall direct a minute or record thereof to be made on the lease or otherwise.

(3) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(4) For the purposes of this section a lease is limited to continue so long as the lessee abstains from committing a breach of any covenant, condition or agreement shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(5) This section does not extend -

- (a) to a condition for forfeiture on the taking in execution of the lessee's interest; or
- (b) in the case of a lease of any premises licensed under the Sale of Liquor Act 1991-92, to a covenant or agreement not to do or omit any act or thing whereby the licence may be lost or forfeited.

(6) The provisions of this section shall, to the exclusion of section 118 of the Property Law Act 1952, apply to a lease to which this Act applies.

**30. Protection of sub-lessee and unit titles on forfeiture of superior leases** - (1) Where a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, the Court may, on application by any person claiming as sub-lessee or as the proprietor of a unit title any estate or interest in the property comprised in the lease, or any part thereof, either:

- (a) in the lessor's action (if any); or
- (b) in any action brought by that person for that purpose,

make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease, or any part thereof, in any person entitled as sub-lessee or as the holder of a unit title to any stratum estate in leasehold or interest in that property, upon such conditions as to execution of any deed or other document, payment or rent, costs, expenses, damages, compensation, the giving of security, or otherwise as the Court in the circumstances of each case thinks fit.

(2) The provisions in subsection (1) of this section shall in no case entitle any such sub-lessee or proprietor to require any lease or stratum estate in leasehold to be granted to him for any longer than he had under the original sublease or stratum estate in leasehold.

(3) Subsection (1) of this section shall not interfere with the lessor's right where applicable to take action and seek relief against a sub-lessee, or proprietor of a unit title.

(4) The provisions of this section shall, to the exclusion of section 119 of the Property Law Act 1952, apply to a lease to which this Act applies.

**31. Lessor in addition to forfeiture, re-entry and distress, may apply for appointment of**

administrator or cancellation of unit plan - (1) Without limiting a lessor's right to forfeiture, re-entry and distress, if -

- (a) the rent or any part thereof is in arrears for one month; or
- (b) the body corporate has failed to perform or observe any of the covenants, conditions, or stipulations contained or implied in the lease and on the part of the lessee to be performed or observed,

the lessor may-

- (c) apply to the Court for the appointment of an administrator, in which case section 44 shall, with any necessary modifications, apply; or
- (d) apply to the Court for the cancellation of the unit plan, in which case section 49 shall, with any necessary modifications, apply.

(2) Upon an application under subsection (1)(d) the Court may make a declaration authorising the cancellation of the unit plan subject to compliance with such conditions and directions imposed or given by the Court within such period as the Court may determine and in the event of non-compliance the unit plan shall be cancelled and in which case, section 49 shall, with any necessary modifications, apply.

(3) Notwithstanding the provisions of subsection (1) no application pursuant to paragraph (c) or paragraph (d) of that subsection shall be made by the lessor until -

- (a) the lessor serves on the body corporate a notice -
  - (i) specifying the particular breach complained of; and,
  - (ii) if the breach is capable of remedy requiring the body corporate to make compensation in money for the breach; and -
- (b) the body corporate fails within a reasonable time thereafter -
  - (i) to remedy the breach, if it is capable of remedy; and
  - (ii) to make reasonable compensation therefore in money, to the satisfaction of the lessor.

(4) A notice under subsection (3) shall not be required where the breach complained of is non-payment of rent.

(5) Where the lessor is applying to the Court under subsection (1)(d) for the cancellation of the unit plan, the body corporate may apply to the Court for relief; and the Court, having regard to the conduct of the parties and to all the circumstances of the case, may grant or refuse relief, as it thinks fit; and if it grants relief may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case thinks fit.

**32. Expiry of lease** - (1) On the expiry of the term of a lease or a renewed or extended term the Registrar shall, if he is satisfied that the term of the lease or an extended or renewed term has expired -

- (a) cancel the unit plan;
- (b) cancel the certificate of title to each of the units; and
- (c) enter a memorial of the expiry of the term on the lease, and in the Register of Titles for the land described in the lease.

(2) On the cancellation of the unit plan and the certificate of title for each of the units under subsection (1), the stratum estate in leasehold in each of the units shall merge with the reversionary estate of the lessor in the land.

**33. Renewal of lease** - Where the term of the lease in the land is to be extended or under the lease a right of renewal of the lease in the land is given to the lessee, the consent of any number of persons who are together entitled to exercise not less than two-thirds of the votes on an ordinary resolution shall be sufficient to approve the terms of the renewal or extension of the lease.

**34. Merger** - (1) Where the lessor has purchased or acquired (whether by operation of law or otherwise) the stratum estates in leasehold in all the units shown on the unit plan, those estates shall not merge with the lessor's reversionary estate in the land until the lessor deposits with the Registrar a declaration that it is his intention that such merger should occur.

(2) Until a declaration under subsection (1) is deposited with the Registrar the stratum estates in leasehold in all of the units shown on the plan shall, if the term of the lease or any extended or renewed term has not expired, vest in the lessor as if the lessor were the proprietor of each of the units.

(3) On the deposit of a declaration under subsection (1) of this section, the Registrar, if he is satisfied that the stratum estates in leasehold in all of the units shown on the plan have merged under the provisions of this section with the reversionary estate in the land, shall -

- (a) enter a memorial of the merger on the Register of Titles for the land described in the lease;
- (b) cancel the certificate of title in respect of the stratum estate in leasehold in each of the units;
- (c) cancel the unit plan.

(4) For the purposes of subsection (3) the outstanding copy of every such certificate of title shall be delivered to the Registrar at the time of the deposit of the declaration.

### **PART 3** **MISCELLANEOUS PROVISIONS**

**35. Recovery of contributions** - Any contribution levied in accordance with section 16(2)(c) shall be due and payable in accordance with the terms of the relevant determination; and so much of the amount as from time to time becomes payable may be recovered as a debt due to the body corporate in an action in the High Court from the person who -

- (a) was the proprietor of the unit at the time when the amount became payable; or
- (b) subject to section 40, was the proprietor of the unit at the time when the proceedings are instituted.

**36. Recovery of money expended for repairs and other work** - (1) Where the body corporate does any repair, work, or act which it is required or authorised by or under this Act or by or under any other Act to do (whether or not the repair, work, or act is done pursuant to any notice or order served on it by a local authority or public body) but the repair, work, or act-

- (a) is substantially for the benefit of one unit only; or
- (b) is substantially for the benefit of some of the units only; or
- (c) benefits one or more of the units substantially more than it benefits the others or other of them,

any expense incurred by it in doing the repair, work, or act shall be recoverable by it in the High Court as a debt due in accordance with the following provisions -

- (d) so far as the repair, work, or act benefits any unit by a distinct and ascertainable amount, the proprietor at the time when the expense was incurred and (subject to the provisions of section 40) the proprietor at the time when the action is instituted shall be jointly and severally liable for the debt; or
- (e) so far as the amount of the debt is not met in accordance with the provisions of paragraph (a), it shall be apportioned among the units that derive a substantial benefit from the repair, work, or act rateably according to the unit entitlements of those units, and in the case of each such unit the proprietor at the time when the expense was incurred and (subject to section 40) the proprietor at the time when the action is instituted shall be jointly and severally liable for the amount apportioned to that unit.

(2) If the Court considers that it would be inequitable to apportion the amount of the debt in proportion to the unit entitlements in accordance with subsection (1)(e), it may apportion that amount in relation to those units in such shares as it thinks fit, having regard to the relative benefits to those units.

**37. Recovery of money expended where person at fault** - Where the body corporate does any repair, work, or act which it is required or authorised by or under this Act or by or under any other Act to do (whether or not the repair, work, or act is done pursuant to any notice or order served on it by any local authority or public body) and the repair, work, or act was rendered necessary by reason of any wilful or negligent act or omission on the part of, or any breach of any rule by, any proprietor or his tenant, lessee, licensee, or invitee, any expense incurred by it in doing the repair, work, or act shall be recoverable by it in the High Court as a debt due from that proprietor.

**38. Interest on money owing to body corporate** -Where, under any of sections 35 to 37, any registered proprietor owes any money to the body corporate, interest shall accrue in respect of so much of the debt as remains unpaid at such rate as the body corporate shall from time to time determine, being not more than 10 percent per annum.

**39. Limitation of liability of proprietors** - Subject to this Act, a proprietor shall not be liable to pay or to contribute to the funds of the body corporate any amount exceeding the due proportion recoverable from him under sections 16(2) and 35 of any amount required to discharge any liability accrued or prospective of the body corporate.

**40. Certificate of proprietor's liability** - The body corporate shall, on the application of a proprietor, any person authorised in writing by him, or a purchaser or mortgagee of a unit, certify -

(a) the amount of any contribution determined as the contribution of the proprietor and the period to which the determination relates;

(b) the manner and time of payment of that contribution;

(c) the extent to which that contribution has been paid by the proprietor;

(d) any amount then recoverable by the body corporate from the proprietor pursuant to sections 15(3), 16(2), and 35;

incurred by the proprietor under section 36 or section 37 of this Act and the general nature of the repair, work, or act;

(f) the rate at which interest is accruing, pursuant to section 38, in respect of any amount owing to the body corporate by the proprietor;

(g) whether or not it has received notice that any proceedings are pending against the body corporate,

and, in favour of any person dealing with that proprietor, the certificate shall be conclusive evidence of the matters certified therein.

**41. Rules** - (1) Except as otherwise provided by this Act, the control, management, administration, use, and enjoyment of the units and the common property shown on a unit plan, and the activities of the body corporate that comprises the proprietors of those units, shall, while there are more proprietors than one, be regulated by the rules for the time being applicable to that body corporate.

(2) Subject to any amendment or repeal thereof or addition thereto the rules applicable to each body corporate shall be those as may be prescribed by regulation.

(3) The rules to be prescribed may provide that certain of those rules and any additions thereto or amendments thereof may not be added to or amended or repealed in relation to any body corporate unless there is either-

(a) a unanimous resolution of the proprietors; or

(b) a resolution of the body corporate at a general meeting.

(4) Subject to this Act, an amendment of or addition to any rule may relate to -

(a) the control, management, administration, use, or enjoyment of the units or the common property; or

(b) the regulation of the body corporate; or

(c) the powers and duties of the body corporate.

(5) No rule or addition to or amendment or repeal of any rule shall prohibit or restrict the devolution of units, or any transfer, lease, mortgage, or other dealing therewith, or destroy or modify any right implied or created by this Act.

(6) No addition to or amendment or repeal of any rule pursuant to subsection (3) or subsection (4) shall have effect until the body corporate has lodged a notification thereof with the Registrar.

(7) The body corporate shall, keep a record of the rules in force from time to time.

(8) The body corporate shall, on the application of a proprietor, or a person authorised by a proprietor to apply, supply to him a copy of the rules in force, and may require him to pay a reasonable charge.

(9) The body corporate shall, on the application of any person who satisfies the body corporate that he has a proper interest in so applying, make the rules available for inspection.

(10) The rules shall ensure for the benefit of the body corporate and every proprietor and be binding on -

- (a) the body corporate;
- (b) all proprietors; and

(10) The rules shall ensure for the benefit of the body corporate and every proprietor and be binding on -

- (a) the body corporate;
- (b) all proprietors; and
- (c) any other person in actual occupation of a unit.

(11) The body corporate or any proprietor shall be entitled to apply to the High Court for an order -

- (a) enforcing the performance of or restraining the breach of any rule; or
- (b) awarding damages for any loss or damage arising out of the breach of a rule.

**42. Provision relating to insurance** - (1) In this section, unless the context otherwise requires,-

"insurer" means an insurer in respect of a principal insurance policy;

"mortgagee" means a mortgagee who, by virtue of subsection (3) has an insurable interest in the property covered by a principal insurance policy;

"principal insurance policy", in relation to the units and common property shown on a unit plan, means the policy of insurance effected by the body corporate in accordance with section 16(1) (b) .

(2) The succeeding provisions of this section shall apply notwithstanding any enactment or rule of law or agreement to the contrary.

(3) Every unit proprietor, and every person entitled as mortgagee by virtue of a mortgage in respect of any unit, has an insurable interest in the property covered by the principal insurance policy.

(4) The body corporate shall inform the insurer, and keep the insurer informed, by notice in writing of the name and address of every proprietor and every mortgagee.

(5) Nothing in subsection (4) shall prevent any unit proprietor or mortgagee from giving such notice to the insurer.

(6) No principal insurance policy shall lapse or be cancelled, but shall remain in full force and effect, until -

(a) the insurer has served on every unit proprietor, and every mortgagee, of which he has had notice aforesaid a notice to the effect that the policy shall lapse or be cancelled on the date specified in the notice, being not earlier than 30 days after the date on which the notice is so served; and

(b) The date specified in the notice has arrived.

(7) Notwithstanding anything in subsection (6)(a), it shall be sufficient for the purposes of that paragraph if the insurer sends the required notice to a unit proprietor or mortgagee by registered post addressed to him at the last address of which notice has been given to the insurer under subsections (4) or (5).

(9) Unless by unanimous resolution all the proprietors otherwise resolve, all money paid by the insurer pursuant to the principal insurance policy shall be applied in or towards reinstatement, and, where it is to be applied, no mortgagee shall be entitled to demand that any part of any such money be applied in or towards repayment of the mortgage debt.

(10) Nothing in this section shall limit or affect the rights of any person in or to the proceeds of the principal insurance policy pursuant to any of the provisions of sections 49 and 50.

**43. Further provisions relating to insurance** - (1) Nothing in section 16 or section 42 of this Act shall limit the right -

(a) of a proprietor to effect a policy of insurance in respect of the destruction of or damage to his unit;

(b) of a mortgagee of a unit to require the proprietor, as a condition of the loan, to effect a policy of insurance (in this section referred to as a mortgage redemption policy) to indemnify

the proprietor against liability to repay the whole or any part of the sum secured to the mortgagee in the event of the destruction or damage of the unit.

(2) Any payment made under a mortgage redemption policy by the insurer shall be made to the mortgagees whose interests are noted on the policy in the order of their respective priorities.

(3) No mortgage redemption policy shall be liable to be brought into contribution with any other policy of insurance except another mortgage redemption policy effected in respect of the same mortgage debt.

(4) This section shall apply notwithstanding any rule of law to the contrary.

**44. Appointment of administrator** - (1) The body corporate, a creditor of the body corporate, or any person having an interest in a unit, may apply to the High Court for the appointment of an administrator.

(2) The Court may, in its discretion on cause shown, appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration, expenses or otherwise as it thinks fit and the remuneration and expenses of the administrator shall be an administrative expense within the meaning of this Act.

(3) The administrator shall, to the exclusion of the body corporate, have and exercise the powers of the body corporate, and be subject to the duties as the Court orders.

(4) The administrator may, in writing, delegate any of the powers so vested in him and at any time revoke any such delegation.

(5) The Court may, in its discretion on the application of the administrator or any other person referred to in subsection (1), remove or replace the administrator.

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

(5) The Court may, in its discretion on the application of the administrator or any other person referred to in subsection (1), remove or replace the administrator.

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

(7) Nothing in this section shall permit an administrator to do anything which requires a unanimous resolution or prevent the passing of a unanimous resolution; but, without restricting the generality of subsection (3), the administrator shall, subject to any order of the Court, be entitled on his own initiative and to the exclusion of the body corporate to do any act which under the rules may be done by special resolution only.

(8) An administrator when appointed shall forthwith lodge with the Registrar a sealed copy of the order of the Court making the appointment.

**45. Exercise of voting rights** - (1) At any meeting of the body corporate, a power of voting

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(a) shall not be exercised by any person who is less than 18 years of age but (except where a power of voting is conferred by paragraph (b) of this subsection) may be exercised on behalf of any such person by a person appointed by the High Court for that purpose;

(b) shall not be exercised by any person over the age of 18 years who is by any rule of law incompetent to deal with his property, but may be exercised on behalf of any such person by the person who is for the time being authorised by law to control or administer the unit or property to which the power of voting relates.

(2) A proprietor's voting rights shall not be affected by reason only of the fact that his interest in his unit is subject to a mortgage, but, on giving written notice to the body corporate, the mortgagee shall be entitled to exercise those rights -

(a) in accordance with any provision to that effect in the mortgage; or

(b) so long as the mortgagee is in possession of the unit.

(3) Where any person by whom a power of voting is exercisable is dead or is out of the Cook Islands, or cannot be found and for that reason or any other reason it is impracticable to obtain the exercise by a person of his power of voting, or where it is not known by what person a power of voting is exercisable, the Court, on the application of the body corporate or of any interested party, may by order -

(a) appoint some fit and proper person for the purpose of exercising such powers of voting as the Court determines, and thereupon the appointment shall take effect accordingly; or

(b) declare that any person's power of voting shall be dispensed with either on a particular occasion or generally, in which case the provisions of this Act or of any rule as to voting shall have effect as if no power of voting were

(5) The Court may from time to time cancel, vary, modify, or discharge any order made by it under this section.

**46. Relief in cases where unanimous resolution required** - In any case where, in accordance with this Act or rules under this Act, a unanimous resolution, or the consent, of all the proprietors is necessary before any act may be done and that resolution or consent is not obtained, but the resolution or act is supported by 80 percent or more of those entitled to vote, any person included in the majority in favour of the resolution or act may apply to the Court to have the resolution as supported or the consents as obtained declared sufficient to authorise the particular act proposed; and, if the court so orders, the resolutions shall be deemed to have been passed unanimously or the consent of all the proprietors obtained, as the case may be.

**47. Relief for minority** - In any case where this Act requires, or the rules of a body corporate require, that a resolution (other than a unanimous one) or the consent of a certain percentage of the votes is necessary before any act may be done, and any such resolution is duly passed or any such consent is obtained, any person who voted against

the resolution or did not consent may apply to the Court to have the resolution or decision declared to be of no effect on the grounds that in the circumstances of the case the effect of the act would be inequitable for the minority; and if the Court so orders, the resolution shall be deemed not to have been passed or the consent shall be deemed not have been obtained.

**48. Redevelopment** - (1) Subject to subsection (2) and to the terms and conditions of the lease, a lessee or body corporate may redevelop an existing unit plan in accordance with a plan of redevelopment.

(2) Application shall be made to the High Court for an order of confirmation of a plan of redevelopment and unless confirmed shall be of no effect.

(3) Subject to the provisions of this section, a plan of redevelopment shall comply with all the requirements of this Act as to unit plans, and shall in addition-

(a) have the same number and be in substitution for the existing unit plan and section 21 shall apply accordingly;

(b) define the boundaries of the new units or the enlarged or reduced units;

(c) show all new units and any enlarged or reduced unit marked with numbers or letters not already used on the unit plan;

(d) bear a legend specifying which of the new units, enlarged units, and reduced units are principal units and which are accessory units;

(e) in the case of a subdivision into 2 or more new units, enlarged units, or reduced units, have endorsed thereon a schedule apportioning among the new units, enlarged units, and reduced units the unit entitlement of the former unit or units included in the redevelopment, which

(e) in the case of a subdivision into 2 or more new units, enlarged units, or reduced units, have endorsed thereon a schedule apportioning among the new units, enlarged units, and reduced units the unit entitlement of the former unit or units included in the redevelopment, which apportionment shall be determined by an approved valuer.

(4) Where a redevelopment involves the inclusion in a unit all or part of the common property or the erection of one or more units on the common property, the unit entitlements of all units that will be on the land to which the plan of redevelopment relates shall be re-assessed by an approved valuer who shall assign to every such unit a new unit entitlement to be fixed by him on the basis of the relative value of the unit in relation to each other such unit at the date on which the re-assessment is made.

(5) The valuer may, in his discretion, make the re-assessment as at the date on which the current unit entitlements were fixed in any case where he considers that the redevelopment is of a relatively minor nature.

(6) A plan of redevelopment shall not be confirmed unless -

(a) the application for confirmation is made by the sole proprietor of the units, or by the proprietors of all the units pursuant to their unanimous resolution; and

(b) every person who is a mortgagee of any unit affected by the redevelopment, has consented to the redevelopment; and

(c) the lessor has consented to the redevelopment; and

(d) the approval of the Leases Approval Tribunal has been given to the plan of redevelopment.

(7) Upon confirmation of a plan of redevelopment the Registrar shall -

(f) cancel the existing certificates of title to the units affected by the redevelopment, and for that purpose the outstanding copies of the certificates of title shall be surrendered to the Registrar; and

(g) issue separate certificates of title in accordance with the plan of redevelopment for the units affected by the redevelopment.

**49. Cancellation of plan by Court** - (1) The High Court may cancel a unit plan upon the application by the body corporate, an administrator, or a proprietor of a unit, and if the Court is satisfied that, it is just and equitable that the body corporate be dissolved and the plan cancelled having regard to the rights and interests of -

(a) any creditor of the body corporate; and

(b) the proprietors of all the units shown on the plan; and

(c) every person who has any interest in any unit or in the land or in any part of the land.

(2) Unless the Court orders otherwise an application for cancellation of a unit plan shall be accompanied by or have lodged in support thereof -

(a) the outstanding certificate of title for every unit;

(d) evidence that the application has been served on the persons referred to in subsection (4).

(3) Before cancelling the unit plan, the Court shall satisfy itself that -

(a) all monies due or which will become due in respect of the units and the common property have been paid or will be paid upon cancellation; and

(b) the lessor and any administrator has consented to the cancellation; and

(c) the land to which the plan relates and units will not be upon cancellation, subject to any mortgage, charge, or sublease; and

(d) the Leases Approval Tribunal has approved the cancellation.

(4) Notice of an application under subsection (1) shall be served on -

(a) every person who has an interest as a proprietor of a unit; and

(b) the Registrar; and

(c) every mortgagee, and other person having any estate or interest in any unit or land to which the plan relates; and

(d) any insurer who has effected insurance on the buildings or other improvements comprised in any unit or on the land or any part thereof; and

(e) such other persons as the Court may direct.

(5). On the hearing of an application under subsection (1), any person referred to in subsection (4) shall have the right to appear and be heard.

(6) Where the Court cancels a unit plan it may impose such conditions and give such directions as it thinks fit, for the purpose of giving effect to the cancellation including directions-

- (a) for the payment of money by or to the body corporate; and
- (b) for the distribution of the assets of the body corporate; and
- (c) that any consent required by subsection (3)(b) be dispensed with.

(7) Upon the cancellation of the unit plan -

- (a) the estate in the land to which the persons who were the proprietors of the units immediately before the cancellation were entitled by virtue of section 10 (which relates to common property) shall remain vested in those persons in the same, shares as if the unit plan had not been cancelled;
- (b) the estate as lessee in that part of the land which immediately before the cancellation comprised units shall vest in those persons referred to in paragraph (a) in the same shares as the estate referred to in that paragraph is held by those persons, and shall merge with that estate;
- (b) the estate as lessee in that part of the land which immediately before the cancellation comprised units shall vest in those persons referred to in paragraph (a) in the same shares as the estate referred to in that paragraph is held by those persons, and shall merge with that estate;
- (c) Every easement over any unit comprising part of the development shall be determined.

(8) Where two or more persons were the proprietors of any unit, whether as joint tenants or tenants in common, the share in the land which vests in them as aforesaid shall, as between themselves, vest in them -

- (a) as joint tenants, of the unit of which they were the proprietors immediately before the cancellation was then vested in them as joint tenants;
- (b) as tenants in common in shares corresponding to the shares in which the unit of which they were the proprietors was vested in them immediately before the cancellation, if that unit was then vested in them as tenants in common.

(9) Subject to subsection (10), upon the cancellation of a unit plan the body corporate shall be deemed to be dissolved; and, unless otherwise previously determined by unanimous resolution of the persons who were the proprietors immediately before the cancellation, all property and money (including insurance money received by the body corporate) shall, subject to any right of set-off, be distributed among those persons according to their unit entitlements immediately before the cancellation.

(10) A body corporate shall be deemed to remain in existence to the extent that any debt is owing by it and in respect of any action pending against it, and the liability of the persons

who were the proprietors immediately before the cancellation shall continue accordingly.

(11) Where the Court makes an order cancelling a unit plan and all conditions and directions imposed or given by the Court have been complied with, the applicant shall, unless the Court directs otherwise, deposit with the Registrar -

- (a) the duplicate certificate of title for every unit;
- (b) the duplicate instrument (if any) of every mortgage, charge or sublease relating to any unit, the common property as a whole, or any part or parts of the common property; and
- (c) a copy of every declaration or order made by the Court under this section in relation to the body corporate or unit plan,-

and the Registrar shall -

- (d) endorse on the unit plan the fact that it has been cancelled and the date of the order by which it was cancelled; and
  - (e) cancel any relevant supplementary record sheet; and
  - (f) note on each certificate and instrument deposited under paragraphs (a) and (b) that the unit plan to which they relate has been cancelled and the date of the order by which it was cancelled.
- (b) for any other reason it is impracticable to obtain production of it.

**50. Scheme following destruction or damage** - (1) Where any building or other improvement comprised in any unit or on any land to which a unit plan relates is damaged or destroyed, but the unit plan is not cancelled, the Court may, on the application of the body corporate, an administrator, a proprietor of a unit, or a mortgagee of a unit, and following the approval by the Leases Approval Tribunal to the scheme, settle a scheme including provisions-

- (a) for the reinstatement in whole or in part of such building or other improvement; or
- (b) for the transfer of units to the proprietors of the other units so as to form part of the common property.

(2) Where an order is made under subsection (1)(b), section 20 shall, so far as applicable, but subject to any order of the Court to the contrary, thereafter apply to any such transfer.

(3) A notice of any application made under subsection (1) shall be served on the Registrar who shall thereupon enter on the supplementary record sheet a notification that application has been so made.

(4) On any application to the Court under subsection (1) any person having or claiming to have any estate or interest in any unit or in the land or in any part of the land or any insurer who has effected insurance on the buildings or other improvements comprised in any unit or in the land or any part thereof shall have the right to appear and be heard.

(5) In the exercise of its powers under subsection (1) the Court may make such orders as it considers expedient or necessary for giving effect to the scheme, including orders -

- (a) directing the application of any insurance money;
- (b) directing payment of money by or to the body corporate or by or to a lessor or any other person;
- (c) directing the deposit of an appropriate new unit plan; or
- (d) imposing such terms and conditions as it thinks fit.

(6) The Court may from time to time cancel, vary, modify, or discharge any order made by it under this section.

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

**51. Joinder of actions** - Where an application under section 47 or section 48 of this Act is pending and an application under the other of those sections is made in respect of the same unit plan, the Court may hear and determine the two applications together.

**52. Service of documents** - (1) The body corporate shall at the main building on the land, display in a prominent place, in the vestibule to that building, its address for service.

(2) It shall be sufficient compliance with any enactment which relates to the manner of service of any document if it is sent by registered letter addressed to the body corporate or the committee, as the case may be, at its address for service.

(3) If the address for the service of documents on the body corporate is at any time altered, the body corporate shall forthwith send notice in the prescribed form to the Registrar of the alteration, and the Registrar shall enter a notification of the change of address on the supplementary record sheet.

(4) For the purpose of this section the term "document" includes any summons, notice, order, and other legal process.

(5) A notice or order requiring repairs to or work to be performed in respect of the land or any building or other improvements thereon which a local authority or public body is required or authorised by any Act, regulation, or bylaw to serve shall, notwithstanding anything in the Act, regulation, or bylaw, be served on the body corporate in the manner provided by this Act, and thereupon the notice order shall be deemed to have been duly served and the body corporate shall be deemed to be the person bound to comply therewith.

**53. Default by body corporate** - (1) Any person (including any local authority or public body) for whose benefit any requirement or duty is imposed on the body corporate by this Act or any regulations made under this Act may apply to the Court for an order compelling the body corporate to carry out the requirement or perform the duty, as the case may be, and on any such application the Court may make such order as it thinks proper.

(2) If default is made by the body corporate in complying with any requirement or duty imposed on it by this Act or any regulations made under this Act, the body corporate, and the secretary to the body corporate if he is knowingly a party to the default, and each

member of any committee of the body corporate who is knowingly a party to the default, commits an offence, and is liable on conviction to a fine not exceeding \$4,000.

**54. Register of proprietors** - (1) The body corporate shall cause a register to be kept of the proprietors for the time being of the units comprised in the unit plan.

(2) Notwithstanding anything to the contrary in this Act, where the proprietor for the time being of any unit comprised in the unit plan transfers that unit to any other person, until the body corporate is notified in writing of the transfer, -

(a) that proprietor shall remain liable to the body corporate for all contributions levied by the body corporate under section 16(2)(c) in respect of that unit;

(b) the transferee shall not be entitled to exercise the voting rights in respect of the unit, without the consent of the other proprietors present at the meeting.

**55. Regulations** - The Queen's Representative may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes:

(a) imposing fees and charges for anything authorised by this Act;

(b) prescribing the content of forms, certificates and notices for the purposes of this Act;

(c) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

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This Act is administered by the Ministry of Justice

**SCHEDULE**  
**[Section (1)(4)]**

Islands to which this Act applies:

Rarotonga

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