

SAMOA

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2009, No. 19

AN ACT to facilitate the subdivision of land into units to be owned by individual proprietors, and common property to be owned by all the unit proprietors as tenants in common, and for the issue of computer folio certificates of title with respect to those units, and to provide for the use and management of the units and common property, and for related purposes. *[27th October 2009]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement-(1) This Act may be cited as the Unit Titles Act 2009.

(2) This Act commences, in whole or in part, on a date or dates to be nominated by the Minister.

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

“accessory unit” means a unit that:

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

(b) is shown on a unit plan as an accessory unit.

“Agency” means the Planning and Urban Management Agency established under the Planning and Urban Management Act 2004;

“body corporate”, in relation to the units and common property shown on a unit plan and to the proprietor or proprietors of those units, means the body corporate that comprises that proprietor, or those proprietors, in accordance with section 14;

“committee”, in relation to a body corporate, means:

(a) the committee constituted under the rules of the body corporate; or

(b) in the case of a body corporate that does not have a committee - the proprietor or proprietors who comprise the body corporate;

“common property” means common property within the meaning of section 4(2)(a)(ii);

“Court” means the Supreme Court of Samoa;

“customary land lease” means a customary land lease interest held in accordance with Article 102 of the Constitution of the Independent State of Samoa and the Alienation of Customary Land Act 1965;

“Land Titles Registration Act” means the Land Titles Registration Act 2008;

- “Ministry” means the Ministry of Natural Resources, Environment and Meteorology;
- “National Building Code” means the building code prescribed under the Ministry of Works Act 2002;
- “Planning and Urban Management Act” means the Planning and Urban Management Act 2004;
- “principal unit” means a unit:
- (a) is designed for use, whether or not in conjunction with an accessory unit, as a place of residence or business, or otherwise; and
 - (b) is shown on a unit plan as a principal unit.
- “proprietor”, in relation to a unit, means the person or persons for the time being registered as proprietor of the unit estate in the unit, in sections 29, 35, 36 and in section 41(11) and (12), unless the context otherwise requires, includes a person in actual occupation of a unit under a binding agreement for sale and purchase;
- “recognised valuer” means a person who practises land valuation under any law or authority;
- “redevelopment” means:
- (a) the subdivision by sale, transfer, or partition into two or more new units, whether or not any new unit is on the same level as any other new unit, or -
 - (i) a unit or units shown on a deposited unit plan; or
 - (ii) a unit or units shown on a deposited unit plan and the whole or part of a stratum or strata formerly forming part of the common property shown on a deposited unit plan; or
 - (b) the enlargement of a unit shown on a deposited unit plan by the inclusion in it of a stratum which immediately touches upon that unit and was formerly part of the common property or part of another unit shown on the plan; or
 - (c) the erection of one or more new units on the common property shown on a deposited plan.

“Register of Lands” means the Land Register established under the Land Titles Registration Act 2008;

“Registrar” means the Registrar of Land under the Land Titles Registration Act 2008;

“rules”, in relation to a body corporate, means the rules applicable to that body corporate prescribed by or under section 41;

“supplementary record sheet” means a folio of the Register for the common property of a unit development;

“unit entitlement”, in relation to a unit, means the unit entitlement assigned to that unit under section 8(1);

“unit estate” means a unit estate within the meaning of section 5(2);

“unit”, in relation to land, means a part of the land consisting of a space 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, being a space that is designed for separate ownership; and

“unit plan” means a plan deposited under section 5(1).

(2) Subject to subsection (3), this Act shall be read as one with the Land Titles Registration Act 2008.

(3) The Land Titles Registration Act 2008 shall be read and construed subject to this Act but, where that Act is inconsistent with this Act, this Act prevails.

3. Application-(1) This Act is subject to the Alienation of Customary Land Act 1965, the Alienation of Freehold Land Act 1972 and the Lands Survey and Environment Act 1989.

(2) This Act applies to:

(a) public land (including Government land) and freehold land; and

(b) leases of public land and of freehold land; and

(c) customary land leases.

(3) No provision of this Act may be construed or applied to:

(a) permit or imply the alienation of customary land in a manner prohibited by Article 102 of the Constitution; or

(b) permit or deem ownership in any customary land to vest in a person otherwise than as determined under any law dealing with the determination of title to customary land.

(4) Nothing in this Act shall permit the exercise of any power or affect any interest in customary land that could not have been applied by law prior to the commencement of this Act.

PART 2 UNIT ESTATES

4. Subdivision of land into units-(1) The registered proprietor of a freehold estate or a leasehold estate in land that is subject to the Land Titles Registration Act 2008 may subdivide that land in accordance with this Act.

(2) Land subdivided in accordance with this Act:

(a) shall be divided into -

(i) two (2) or more principal units; and

(ii) common property being so much of the land as is not comprised in any unit; and

(b) may additionally be divided into one (1) or more accessory units.

5. Subdivision effected when plan deposited-(1) The subdivision of land so as to provide for units shall be effected by the deposit under the Land Titles Registration Act 2008 of a plan that:

(a) specifies the units in their relation to the building on the land; and

(b) includes -

(i) the boundaries of the land being subdivided; and

(ii) the allotments and their areas and dimensions; and

(iii) any existing roads and road reserves; and

(iv) any existing and proposed public reserves; and

- (v) any existing easements; and
- (vi) any proposed roads and proposed road splays or proposed road widening; and
- (vii) adequate access to all parcels of land depicted in a plan; and
- (viii) any other particulars subdivision plan.

(2) The deposit of a unit plan shall have the effect of creating in each unit a unit estate in freehold or in leasehold, as the case may be, which shall comprise:

(a) the -

- (i) fee simple estate; or
- (ii) leasehold estate,

as the case may be, in the unit determinable in accordance with section 49, 51 or 52; and

(b) the undivided share in -

- (i) the fee simple estate; or
- (ii) the leasehold estate,

as the case may be, in the common property to which the proprietor of the unit is entitled by virtue of section 11; and

(c) the undivided share in -

- (i) the fee simple estate; or
- (ii) the leasehold estate,

as the case may be, in all the units to which the proprietor of the unit is contingently entitled by virtue of sections 49 and 51.

(3) On the creation of a unit estate in a unit:

(a) that estate may devolve or be transferred, leased, mortgaged or settled; and

(b) a transfer, lease, mortgage or settlement of that estate shall have the same effect as if the estate were -

- (i) an estate in fee simple in land; or
- (ii) an interest in land under a lease, as the case may be,

but -

(c) the fee simple estate, or the interest as lessee, as the case may be, in the land the subject of the development, shall not be capable of devolving or being dealt with in any way; and

(d) except as provided in section 11, none of the component parts of the unit estate in that unit shall be capable of devolving or being dealt with independently of the other component parts thereof.

(4) Notwithstanding subsection (3), a proprietor of a unit shall not grant an easement over the unit except with the consent of the proprietor, and any mortgagee of each unit comprising the development.

(5) When a unit is transferred, leased, mortgaged, settled or otherwise dealt with, it shall be described in the computer folio certificate evidencing the transaction as “Unit No. on Unit Plan No.”.

6. Restrictions on deposit of plan-(1) Subject to subsection (2), a unit plan shall not be accepted by the Registrar for deposit:

- (a) while the land to which it relates is held in more than one folio of the Register; or
- (b) unless the land to which it relates is the whole of the land in a folio of the Register; or
- (c) until it has been approved by a licensed surveyor; or
- (d) unless -
 - (i) if the land is held under a lease – the lessor;
 - (ii) the registered proprietor of any mortgage or charge affecting the land or part of it; and
 - (iii) any caveator whose caveat against the land was lodged with the Registrar before the application to deposit the plan,

have given written consent, either personally or by an agent duly authorised in writing, to its being deposited; or

- (e) unless a development consent has been given by the Agency 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; or

(f) the plan does not comply with the requirements of section 5(1).

(2) Subsections 1(a) and (b) shall not prevent a plan being accepted for deposit where one computer folio certificate can properly be issued for the land to which the plan relates.

(3) The approval of a licensed surveyor referred to in subsection (1)(c), when endorsed on a unit plan, shall have effect to:

(a) approve, for the purposes of the survey provisions of the Survey Ordinance 1961 and Part III of the Lands, Surveys and Environment Act 1989 (as the case requires), survey definitions incorporated in the plan; and

(b) approve, for the purposes of this Act and the Land Titles Registration Act 2008, the definitions of all the units and common property shown on the plan; and

(c) render the plan the property of the Government.

7. Responsibilities, etc of the Agency-(1) The Agency shall not refuse to give a development consent in respect of a unit plan under section 6(1)(e) except on one (1) or more of the following grounds, in addition to the grounds set out in the Planning and Urban Management Act 2004:

(a) that -

(i) a building shown on the plan has not been erected; or

(ii) other development work has not been carried out,

to the extent necessary to enable the boundaries of each unit and the common property shown on the plan to be physically measured:

(b) that -

(i) a building has been erected; or

(ii) other development work requiring a permit from the Agency has been carried out on the land,

without a necessary consent from the Agency having been obtained;

(c) that a building on the land has been erected -
 (i) in a place in relation to a boundary; or
 (ii) to a height,
 that contravenes the Planning and Urban Management Act 2004:

(d) that a building or another part of the development contravenes the Planning and Urban Management Act 2004 in a manner other than that referred to in paragraph (c) to an extent that requires the making of alterations that may affect the situation or a boundary of -
 (i) a unit; or
 (ii) a part of the common property,
 shown on the plan.

(2) Where:

(a) the Agency has given a development consent in respect of a unit plan under section 6(1)(e); and
 (b) that plan has been deposited under this Act,
 the Agency, notwithstanding any written law or rule of law to the contrary shall have no power to require an alteration to a building or another particular development that may affect the location or a boundary of:

(c) a unit; or
 (d) a part of the common property,
 shown on the plan, but may otherwise pursue remedies it may have, including prosecution of a person, in respect of non-compliance with the Planning and Urban Management Act 2004.

(3) The Agency shall not be under any civil or criminal liability in respect of the giving in good faith of a development consent under section 6(1)(e).

8. Unit entitlement-(1) Before a plan is accepted for deposit there shall be assigned to:

(a) each principal unit; and
 (b) each accessory unit,
 shown on the plan a unit entitlement, to be fixed by a licensed valuer, on the basis of the relative value of the unit in relation to each of the other units on the plan.

(2) Subject to sections 21(5)(d) and 48(3)(d), after a unit plan has been deposited a change shall not be made in the unit entitlement of a unit shown on the plan.

(3) A unit entitlement assigned to a unit in accordance with subsection (4) shall be used for determining the following matters, namely:

- (a) the proprietor's share in the common property in accordance with section 11;
- (b) the extent of the proprietor's liability for damages and costs under section 16(6);
- (c) the extent of the proprietor's -
 - (i) obligation under section 17(2)(c) in respect of contributions levied by the body corporate; and
 - (ii) rights under section 17(3) 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 29;
- (e) the extent of the proprietor's share of the value of any buildings, fixtures, and other improvements under section 33(2);
- (f) the share in the land which is to vest in the proprietor under section 49(6)(a) on the cancellation of the unit plan;
- (g) subject to section 52(5), the proportion in which money received or held by the body corporate for distribution among the proprietors is to be distributed among them in accordance with section 49(8).

9. Existing easements or restrictions affecting land-(1) The deposit of a unit plan shall have no effect on:

- (a) an easement or restriction as to user to which the land to which the plan relates is subject; or
- (b) an easement or restriction as to user which is appurtenant to that land.

(2) Notwithstanding any Act to the contrary, the Registrar shall:

- (a) require an easement or restriction referred to in subsection (1) to be recorded by diagram, words, or otherwise on the unit plan; and
- (b) not note the easement or restriction on a folio of the register for the unit plan.

10. Folios of the Register for the unit plan-(1) On the deposit of a unit plan, the Registrar shall create a new folio of the Register for each unit estate, either in freehold or leasehold, in all of the units shown on the unit plan.

(2) The Registrar shall enter a memorial of:

- (a) all unsatisfied mortgages, leases and other estates and interests, outstanding or otherwise, to which the land is subject at the time of deposit of the unit plan; and
- (b) in the case of a minor or a person under any other legal disability holding the unit estates of any units shown on the unit plan, state the particulars of that disability so far as the Registrar has noticed or knowledge of it, in the relevant folio or folios of the Register, in such manner as to preserve their priority.

(3) A folio of the Register created under this section shall be deemed to be a folio of the Register created under the Land Titles Registration Act 2008.

(4) It shall not be necessary in a folio of the Register created under this section to record the quantum of the undivided share in the common property to which the proprietor is entitled by virtue of section 11(1).

11. Common Property-(1) On the deposit of a unit plan, the Registrar shall create a new folio of the Register for the common property, either in freehold or leasehold, shown on the unit plan.

(2) The common property shall be held by the proprietors of all the units as tenants in common in shares proportional to the unit entitlements in respect of their respective units.

(3) Nothing in subsection (2) shall affect the interests among themselves of the proprietors of the unit estate in an individual unit.

(4) While the same person can be the proprietor of more than one unit, subsection (2) shall apply as if there were a different proprietor of each unit.

(5) The proprietors of all the units may:

- (a) sell or lease part of the common property; or
- (b) grant an easement over the common property or part of it.

12. Independent dealings with accessory units restricted-(1) Subject to subsection (2), an accessory unit or an interest in it shall not 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.

(2) The proprietor of a principal unit that includes an accessory unit in its folio of the Register may let the accessory unit on a weekly tenancy or on a tenancy determinable at the will of the parties by one (1) month's written notice.

(3) Where the folio of the Register for a principal unit includes an accessory unit, an interest in that principal unit, shall not be sold, lease, mortgage, disposition, or dealing which includes the accessory unit or a corresponding interest in the accessory unit.

(4) Any purported sale, lease, mortgage, disposition, or dealing with an accessory unit in contravention of subsection (1) or a principal unit in contravention of subsection (3) shall be void and of no effect.

(5) Nothing in subsection (4) 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.

13. 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 rights for the passage or provision of water, sewerage, drainage, gas, electricity, oil, garbage, air, and other

services of whatsoever nature, including telephone, radio, internet and television services, over the land to which the unit plan relates and every part of that land 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 to it:

(a) a right to the full, free, and uninterrupted access and use of light to or for windows, doors, or other apertures existing at the date of deposit of the unit plan and enjoyed at that date; and

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

over the land to which the plan relates and every part of that land.

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

14. Proprietors to constitute body corporate-(1) On the deposit of a unit plan, the registered proprietor of the land to which the plan relates shall become a body corporate.

(2) After the deposit of a unit plan 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 Number” (being the registered number of the unit plan).

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

15. Actions by and against the body corporate-(1) A body corporate may:

(a) sue and be sued in its corporate name; and

(b) do and suffer all other things that bodies corporate may do and suffer.

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

16. Liability in tort-(1) Where any proceedings are brought in any court of competent jurisdiction 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, 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 (1) 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 a 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) is limited to an amount equal to such part of the nett sum payable by the body corporate in accordance with the judgment as is proportionate to the unit entitlement of the proprietor's unit.

(7) For subsection (6), “the nett sum payable by the body corporate in accordance with the judgment” means the total sum payable by the body corporate in accordance with the judgment less:

- (a) any amount which the body corporate recovers under a policy of insurance; and
- (b) any amount -
 - (i) paid by a proprietor against whom judgment is given pursuant to subsection (3); or
 - (ii) recovered from such proprietor under subsection (4),

as the case may be.

(8) Where an amount is recovered from a proprietor, under subsection (4), after satisfaction of the judgment by the body corporate, it shall, subject to any right of set-off, be refunded to those proprietors who have made a payment under subsection (6), in proportion to the amount of their payments.

(9) Where a proprietor pays to the plaintiff a sum which the proprietor is liable to pay under subsection (5), the proprietor may recover that sum from the body corporate in a court of competent jurisdiction as a debt due to the proprietor from the body corporate.

(10) Subsection (9) shall not prevent a body corporate in an action referred to in that subsection from claiming a sum due to it from a proprietor under this Act by way of set-off.

(11) If a body corporate at a general meeting so resolves, a sum payable by it in accordance with this section may be paid out of any general fund established by it.

17. Duties of body corporate-(1) A body corporate shall:

- (a) subject to this Act, carry out the duties imposed on it by its rules; and
- (b) insure and keep insured all buildings and other improvements on the land, which shall include demolition costs and architect’s fees against fire, flood, explosion, wind, storm and tempest, hail, aircraft and devices dropped from aircraft,

- impact, riot, strikes and civil commotion, malicious damage and earthquakes; and
- (c) effect such other insurance as it is required by law to effect or as it may consider expedient; and
 - (d) subject to sections 49, 50, 51 and 52, apply as soon as practicable insurance money received by it in respect of damage to a building or improvements in the rebuilding or reinstating may lawfully be effected; and
 - (e) pay the premiums in respect of policies of insurance effected by it; and
 - (f) keep the common property in good repair; and
 - (g) comply with notices or orders served on it by any government authority or public body requiring repairs to, or work to be performed in respect of, the land in respect of which it is the body corporate, or a building or improvement on that land; and
 - (h) subject to this Act, control, manage and administer the common property and do all things reasonably necessary for the enforcement of the rules; and
 - (i) do all things reasonably necessary for the enforcement of and compliance with the deed of lease under which the land is held; and
 - (j) do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section.
- (2) A body corporate shall also:
- (a) establish and maintain a fund for administrative expenses sufficient, in the opinion of the body corporate -
 - (i) for the control, management and administration of the common property; and
 - (ii) for the payment of insurance premiums, any rent, rates, and repairs; and
 - (iii) for the discharge of the other obligations of the body corporate; and

- (b) determine from time to time the amounts to be raised for the purposes referred to in paragraph (a); and
- (c) raise amounts determined under paragraph (b) by levying contribution on each proprietor in proportion to the unit entitlement of that proprietor's unit.

(3) A body corporate may, pursuant to a resolution of the proprietors, distribute money or personal property in its possession and surplus to its current requirements, among the proprietors according to their unit entitlements.

(4) For the purposes of effecting a policy of insurance under subsection (1), a body corporate is deemed to have an insurable interest in all the buildings and other improvements on the land in respect of which it is the body corporate.

(5) A policy of insurance authorised by this section and effected by a body corporate in respect of a building or other improvement on the land shall not be liable to be brought into contribution with another policy, unless that other policy is a policy authorised by this section in respect of the same building or improvement.

18. Powers of body corporate-(1) Subject to this Act, a body corporate shall have all powers reasonably necessary to enable it to carry out the duties imposed on it by this Act and by its rules.

(2) A body corporate shall not have power to carry on a trading activity.

(3) A 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.

(4) 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 their unit subject to any restrictions and powers affecting it and contained in the management agreement.

19. Dealings affecting the common property-(1) Subject to subsection (2), an instrument evidencing a transfer, lease or grant of easement affecting:

- (a) the common property; or
- (b) land that is to become part of the common property, may be executed by a body corporate, if the transfer, lease, or dealing has been approved by unanimous resolution of the body corporate.

(2) The transfer, lease or grant of an easement shall not apply to the holder of a lease of freehold land or of a customary land lease.

20. Registration of transfers of common property-(1) A transfer in the approved form under the Land Titles Registration Act 2008 of the whole or a part of the common property shall, in addition to any plan that the Registrar may require to be deposited under the Land Titles Registration Act 2008, be accompanied by a new unit plan, which shall:

- (a) be in substitution for, and shall be deposited under the same number as the existing unit plan; and
- (b) show the effect of the transfer to the satisfaction of the Registrar.

(2) Where a unit is subject to an existing registered mortgage, charge, lease or sublease, the Registrar shall not register a transfer of the whole or a part of the common property until there has been produced to the Registrar the written consent of every registered mortgagee, annuitant, lessee and sublessee to the release of that person's interest in the land comprised in the transfer, and, on registration of the transfer each such consent shall operate as a discharge of the mortgage or charge or surrender of the lease or sublease, as to the land comprised in the transfer, as the case may be.

(3) The Registrar shall register a transfer to which subsection (1) applies by entering an appropriate memorial relating to the transfer on the new unit plan and on the supplementary record sheet.

(4) This section does not restrict the operation of section 22.

(5) This section shall apply to every case where any common property is taken under the Taking of Lands Act 1965 and if the body corporate so requests by notice in writing, a licensed surveyor employed in the Ministry shall, at the expense of the ministry, department or agency of the Government benefiting from the action, prepare the new unit plan required by subsection (1).

21. Additions to common property-(1) Land which is transferred, free from any registered mortgage, charge, lease, or sublease to the registered proprietors of all the units shown on the unit plan, whether by name or general description, may be included in the subdivision to which the unit plan relates as part of the common property if the transfer contains, or has endorsed on it or annexed to it, a request by the body corporate that purports to be given in pursuance of a unanimous resolution of the body corporate or a request by the transferees to the Registrar so to do, and:

- (a) where a unit estate in freehold exists in the units shown on the plan – the transfer is of an estate in fee simple in the land to which it relates; or
- (b) where a unit estate in leasehold exists in the units shown on the plan – the transfer is of an estate as lessee from the lessor of the land already included in the subdivision under a lease for the remaining period, on the same terms and conditions (other than the amount of rent), and containing the same provisions as the current lease of the land already included in the subdivision.

(2) A unit, together with the undivided share in common property of the proprietor of that unit, which is transferred free of any registered mortgage, charge, lease, or sublease to the proprietors of all the other units shown on a unit plan, whether

by name or general description, may be included in the subdivision to which the unit plan relates, as part of the common property if the transfer contains or has endorsed on it or annexed to it a request by the body corporate that purports to be given in pursuance of a unanimous resolution of the body corporate or a request by a transferee to the Registrar, that the unit be so included.

(3) A transfer to which subsection (1) or (2) relates shall, when presented for registration, be accompanied by a new unit plan, which shall:

- (a) be in substitution for, and shall be deposited under the same number as, the existing unit plan; and
- (b) show the effect of the transfer to the satisfaction of the Registrar; and
- (c) have endorsed on it an amended schedule of unit entitlements assigned in accordance with section 8(1).

(4) The registration of a transfer under subsection (1) or (2) shall have the effect of including the transferred land or unit as part of the relevant common property, and the undivided share of the proprietor of each other unit in the land or unit so included shall be held by the proprietor subject to the same terms, conditions, liabilities, and encumbrances as those on and subject to which the proprietor held the unit immediately before the registration of the transfer, and subject in all respects to any mortgage, charge, lease, or sublease then affecting the proprietor's unit as if the transferred land had been included expressly.

(5) The Registrar shall register a transfer under subsection (1) or (2) by:

- (a) entering on the new unit plan and on the supplementary record sheet an appropriate memorial relating to the transfer; and
- (b) entering 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

- (c) where the transfer is of a unit shown on the existing plan, recording on the new unit 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) This section does not restrict the operation of section 22.

22. 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 a unit plan and body corporate, a supplementary record sheet, on which the Registrar shall note appropriate memorials relating to:

- (a) instruments which are registered and affect the whole or any part of the common property, independently of the units, to which the unit plan relates; and
 - (b) other matters which, in accordance with this Act, have to be noted on a supplementary record sheet.
- (2) A supplementary record sheet shall be maintained in the same manner as a folio of the Register, and the number of the supplementary record sheet shall be entered on the unit plan or its recorded copy.
- (3) Where, under sections 20, 21 and 48, 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; and
 - (b) the plan so deposited shall be noted so as to show clearly that it is in substitution for the earlier plan which shall be identified by the number under which it is filed; and
 - (c) where a unit is described in a computer folio certificate or any other instrument by reference to a numbered unit plan, the reference shall be read as a reference to the plan for the time being deposited under that number.

- (4) The Registrar shall:
- (a) where he or she issues a copy of a previous unit plan - indicate on the copy the number under which that previous unit plan has been refiled; and
 - (b) where he or she issues a copy of a unit plan in respect of which a supplementary record sheet has been set up - indicate on that copy the reference number of that supplementary record sheet.

23. Approval of Registrar to transfer etc.-(1) The approval of the Registrar is required for a transfer or assignment (other than an assignment by way of mortgage) of a unit estate in fee simple or in leasehold, provided that the Registrar's approval must not be unreasonably or arbitrarily withheld.

(2) The Registrar, in considering whether to approve or withhold approval, must have regard to the following matters:

- (a) the nature of the use to which the purchaser assignee or lessee proposes to devote the unit estate and his or her ability to achieve that purpose;
- (b) whether the transfer or assignment would be in or against the public interest, and whether the intended use of the unit estate will be in the interests of the community generally;
- (c) whether a withholding of approval of consent would result in substantial hardship to the transferor or assignor;
- (d) any other matters (if any) prescribed from time to time.

(3) An application to the Registrar for approval must be in the approved form, which may be in the form of a statutory declaration.

(4) If approval is withheld by the Registrar, and the transferor or assignor believes the withholding of approval is unreasonable or arbitrary, the transferor or assignor may apply in writing to the Minister administering this Act to review the withholding of approval and the Minister, upon review, may confirm the withholding of approval or direct that approval be given.

PART 3
SPECIAL PROVISIONS RELATING
TO LEASEHOLD LAND

24. Application of Part 3-(1) Where a deposited unit plan relates to a leasehold estate in land, this Part shall apply notwithstanding anything contained or implied in the lease of that land.

(2) Parts 2 and 4, in so far as they relate to leasehold estates in land, shall be read subject to this Part.

(3) In this Part, unless the context otherwise requires, “lease” means a lease of land the subject of a unit plan.

25. Preservation of lessor’s interest-(1) Neither the deposit of a unit plan nor a dealing with a 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 this Part, the lessor may deal with the reversionary estate in the leased land in all respects as if the unit plan had not been deposited.

26. Powers of body corporate in respect of lease-(1) Subject to this Act, on the deposit of a unit plan and until its cancellation, 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 to the lessee; 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 a breach by the lessor of a 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 a unit or the proprietor of an estate or interest in a unit.

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

27. Dealing with unit estate in leasehold-(1) The lessor's consent shall be required to an assignment, (including an assignment by way of a mortgage of a unit estate in leasehold of Government land), or to a transfer of a unit estate in leasehold, provided that the lessor's consent shall not be unreasonably or arbitrarily withheld.

(2) For the purposes of this section, the deposit of a plan of redevelopment under section 48 affecting a unit shall not be deemed to be a dealing with the unit estate in leasehold in that unit.

(3) This section shall not preclude the right of a lessor to require the payment by the person seeking the assignment or transfer of the lessor's reasonable expenses in relation to the granting of consent to an assignment or transfer.

28. Restrictions on surrenders and releases-(1) After the deposit of a unit plan, and until its cancellation, the following provisions shall apply:

- (a) a proprietor of a unit shall not be entitled to surrender or agree to surrender the unit estate in leasehold in that unit to the lessor, whether for valuable consideration or otherwise;
- (b) the lessor shall not be entitled to release or agree to release a unit or the common property or a part of it 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 unit estate in leasehold in that unit;

- (d) where the lessor purchases or acquires the unit estate in leasehold in a unit, whether by operation of law or otherwise, that estate shall not merge with the lessor's reversionary estate.
- (2) A purported surrender or release in contravention of section 28(1)(a) or (b) is 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; or
 - (b) all the proprietors of all the units from surrendering or agreeing to surrender to the lessor the unit estates in leasehold in all the units; or
 - (c) the lessor from releasing or agreeing to release all the units together with the whole of the common property from the lease.

29. Implied guarantee by unit proprietors-(1) Subject to subsection (2), each proprietor of a unit to which this Part applies is 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 in the lease; and
 - (b) the performance or observance by the body corporate of the covenants, agreement, 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 referred to in subsection (1) under the guarantee deemed by that subsection to have been given in respect of rent or other money payable under the lease to the lessor, including money which has become payable by virtue of a breach by the body corporate of a covenant, agreement, or stipulation contained or implied in the lease:
- (a) is 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) relates only to the rent and other money due or accruing due while he or she is the proprietor of that unit.

(3) No neglect or forbearance of the lessor in 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 in the lease 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 affect the liability of a proprietor under subsection (1).

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

(5) Subsection (4) does not prevent a body corporate in an action referred to in that subsection from claiming any sum due to it from that proprietor under this Act by way of set-off.

30. Exclusion of powers of forfeiture, re-entry and distress-(1) After the deposit of a unit plan to which this Part applies, and until its cancellation:

(a) a right of forfeiture or re-entry, whether for non-payment of rent or otherwise, shall not be exercisable by the lessor; and

(b) a right of distress, whether for non-payment of rent or otherwise shall not be exercised by the lessor.

(2) Subject to subsection (3), where the proprietor of a unit becomes liable under section 29(1) to pay to the lessor a sum, whether in respect of rent or other money payable under the lease, the lessor may subject to subsection (3), enforce payment of the sum in the same manner as the proprietor would have been able to do 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 lessee under the lease.

(3) Subsection (2) shall not entitle, empower or authorise a lessor to forfeit or determine a proprietor's interest under a lease or to distrain for rent.

31. Lessor may apply for appointment of administrator or cancellation of unit plan-(1) If:

- (a) the rent or any part thereof is in arrears for one (1) month; or
- (b) the body corporate has failed to perform or observe a covenant, condition, or stipulation 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, with necessary modifications, applies; or
- (d) apply to the Court for the cancellation of the unit plan, in which case section 50, with necessary modifications, applies.

(2) Where:

- (a) on an application made by the lessor under subsection (1)(d), the Court makes a declaration authorising the cancellation of the unit plan; and
- (b) all conditions and directions imposed or given by the Court have been complied with,

the lessor may, within six (6) months after the date of the declaration, apply to the Registrar for cancellation of the plan, in which case section 49, with necessary modifications, applies.

(3) Notwithstanding subsection (1) an application shall not be made under subsection (1)(c) or (1)(d) by the lessor until:

- (a) the lessor serves on the body corporate and upon each registered proprietor 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 after the service of the notice -

(i) to remedy the breach, if it is capable of remedy; and

(ii) to make reasonable compensation for the breach 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 applies 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 a like breach in the future.

32. Expiry of lease-(1) The term of a lease or a renewed or extended term shall be deemed not to have expired until:

(a) the unit plan has been cancelled; or

(b) a certificate of expiry has been registered in accordance with subsection (3).

(2) On the cancellation of the unit plan, the term of the lease shall be deemed to expire, unless the lessor:

(a) has consented, in writing, to the cancellation of the plan; and

(b) agreed that the lease is to continue in force according to its tenor.

(3) At any time after the date on which the lease or any extended or renewed term is by the relevant instrument expressed to expire:

(a) the lessor; or

(b) persons who are together entitled to exercise more than one-third of the votes on an ordinary resolution of the proprietors,

on giving 14 days written notice to the body corporate, may lodge with the Registrar a certificate of expiry in the prescribed form, and, on receiving the certificate, the Registrar shall, if he or she is satisfied that the term of the lease or an extended or renewed term has expired:

- (c) cancel the unit plan; and
 - (d) cancel the computer folio certificate to each of the units; and
 - (e) enter a memorial of the expiry of the term on the lease and its counterpart and on the lessor's computer folio certificate.
- (4) For the purposes of subsection (3)(e), the counterpart of the lease shall be delivered to the Registrar when the certificate of expiry is lodged with the Registrar.

33. Renewal or expiry of lease and purchase of reversionary interest-(1) Where, the term of the lease is to be extended or under the lease a right of renewal of the lease or an option to purchase the reversionary estate in the land is given to the lessee, the following provisions apply:

- (a) in the case of a right of renewal or extension of the lease - the consent of persons who are together entitled to exercise not less than two-thirds of the votes on an ordinary resolution of the proprietors shall be sufficient to approve the terms of the renewal or extension of the lease; or
 - (b) in the case of an option to purchase the reversionary estate in the land - the consent of the proprietors of all the units shall be required to the terms of the purchase.
- (2) Where, on the expiry of a lease, the lessee is entitled under the lease to an amount equal to the value of buildings, fixtures, and other improvements on the land or to part of that value, then, notwithstanding section 26 but subject to subsection (3), the persons who were the proprietors of the units immediately before that expiry shall be entitled to receive that amount in shares proportionate to the unit entitlement of their respective units.
- (3) If the Court considers that it is inequitable to apportion the amount referred to in subsection (2) among the persons and in the shares specified in that subsection, it may apportion that amount among them in shares proportionate to the relative values of the units.

34. Merger-(1) Where the lessor has purchased or acquired, whether by operation of law or otherwise, the unit 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 the lessor's intention that a merger should occur.

(2) Where all the proprietors of all the units shown on the unit plan have purchased or acquired, whether by operation of law or otherwise, the reversionary estate in the whole of the land, that estate shall not merge with the unit estates in leasehold in those units unless and until:

- (a) that reversionary estate is purchased or acquired by those proprietors in shares proportional to the unit entitlement of their respective units; and
- (b) the registered proprietors deposit with the Registrar a declaration that it is their intention that a merger should occur.

(3) The effect of a merger referred to in subsection (1) or (2) is:

- (a) where the lessor has purchased or acquired the unit estates in leasehold in all of the units shown on the plan – to vest the unit estate in freehold in each of the units in the lessor; or
- (b) where all the registered proprietors of the unit estates in leasehold in all the units shown on the plan have purchased or acquired the reversionary estate in the land – to vest the unit estate in freehold in each unit in the person who immediately before the merger was the proprietor of the unit.

(4) On the deposit of a declaration under subsection (1) or (2)(b), the Registrar, if he or she is satisfied that the unit 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) note on the supplementary record sheet a memorial of the merger; and
 - (b) cancel the computer folio certificate in respect of the unit estate in leasehold in each of the units; and
 - (c) issue a computer folio certificate in respect of the unit estate in freehold in each unit to the person entitled to it under subsection (3); and
 - (d) cancel the lease; and
 - (e) cancel the lessor's computer folio certificate.
- (5) For the purposes of subsection (4), the counterpart of the lease shall be delivered to the Registrar at the time of the deposit of the declaration under subsection (1) or (2)(b).

PART 4 MISCELLANEOUS PROVISIONS

35. Recovery of contributions – Contribution levied in accordance with section 17(2)(c) is 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 by the body corporate in an action in a court of competent jurisdictions from either:

- (a) the person who was the proprietor of the unit at the time when the amount became payable; or
- (b) subject to section 40, 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 is substantially for the benefit of one unit only or is substantially for the benefit of some of the units only, or 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 as a debt in any court of competent jurisdiction in accordance with the following provisions:

- (a) 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 section 40) the proprietor at the time when the action is instituted shall be jointly and severally liable for the debt; or
 - (b) 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)(b), 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:

- (a) a body corporate does any repair, work or act which it is required or authorised by or under this Act or any other written law, whether or not the repair, work or act is done in pursuance of a notice or order served on it by a public body or authority; and
- (b) the repair, work or act was rendered necessary by reason of a wilful or negligent act or omission on the part of, or a breach of a rule by, a proprietor or his or her tenant, lessee, licensee or invitee,

expenses incurred by the body corporate in doing the repair, work or act shall be recoverable by it as a debt in a court of competent jurisdiction from that proprietor.

38. Interest on money owing to body corporate - Where, under section 35, 36 or 37, a registered proprietor owes money to a 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 per cent a year.

39. Limitation of liability of proprietors - Subject to this Act, a proprietor shall not be liable to pay or contribute to the funds of a body corporate an amount exceeding the due proportion recoverable from that proprietor under sections 17(2) and 35 of any amount required to discharge a liability, accrued or prospective, of the body corporate.

40. Certificate of proprietor's liability - A body corporate shall, on the application of a proprietor (or a person authorised in writing by a proprietor) or a purchaser or mortgagee of a unit, certify in the prescribed form:

- (a) the amount of any contribution determined as the contribution of the proprietor and the period to which the determination relates; and
- (b) the manner and time of payment of that contribution; and
- (c) the extent to which that contribution has been paid by the proprietor; and
- (d) any amounts then recoverable by the body corporate from the proprietor under sections 16(4), 17(2)(c) and section 35; and
- (e) whether or not the body corporate has performed or entered into a contract to perform or resolved to perform any repair, work or act in respect of which a liability has been or is likely to be incurred by the proprietor under section 36 or 37 and the general nature of the repair, work or act; and

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

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

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

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 (1), be regulated by the rules for the time being applicable to that body corporate.

(2) Subject to any amendment to, repeal of, or addition to, the rules, the rules applicable to a body corporate shall be those prescribed by regulation.

(3) The rules to be prescribed may provide that certain of those rules and any additions to or amendments of those rules, may not be added to or amended or repealed in relation to a 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 addition to, or amendment of, a rule shall 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, other than those conferred or imposed by this Act.

(5) Powers and duties may not be conferred or imposed by the rules on a body corporate:

- (a) unless those powers and duties are incidental to the performance of the duties or powers imposed on it by this Act; or

(b) if they would enable the body corporate to -

(i) acquire or hold an interest in land or a chattel real; or

(ii) carry on a business for profit.

(6) A rule or an amendment to, or repeal of, or addition to, a rule shall not prohibit or restrict the devolution of a unit, or a transfer, lease, mortgage or other dealing with a unit, or destroy or modify a right implied or created by this Act.

(7) An amendment to, repeal of, or addition to, a rule in pursuance of subsection (3) shall not have effect until the body corporate has lodged a notification of the amendment, repeal or addition with the Registrar in the prescribed form, and the Registrar has recorded it on the supplementary record sheet.

(8) A body corporate shall keep a record of the rules applicable to it from time to time.

(9) A body corporate shall, on the application of a proprietor, or a person authorised by a proprietor to apply, and on payment of any reasonable fee, supply to that proprietor or person a copy of its rules.

(10) A body corporate shall, on the application of a person who satisfies the body corporate that he or she has a proper interest in so applying, make its rules available for inspection.

(11) The rules shall operate for the benefit of the body corporate and every proprietor, and are binding on:

(a) the body corporate; and

(b) all proprietors; and

(c) any other person in actual occupation of a unit.

(12) A body corporate or a proprietor is entitled to apply to the Court for an order:

(a) enforcing the performance of or restraining the breach of a rule applicable to the body corporate; or

(b) awarding damages for loss or damage arising out of the breach of a rule by -

(i) a person bound to comply with the rule; or

(ii) the body corporate.

42. 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 relevant body corporate in accordance with section 17(1)(b).

(2) This section shall apply notwithstanding any written law, rule of law or agreement to the contrary.

(3) A proprietor and a person entitled as mortgagee by virtue of a registerable mortgage in respect of a unit each have an insurable interest in the property covered by the principal insurance policy.

(4) A body corporate shall give the insurer, and keep the insurer informed, by notice in writing of the name and address of each proprietor and each mortgagee.

(5) Subsection (4) does not prevent a proprietor or mortgagee from giving notice to the insurer.

(6) A principal insurance policy shall not lapse or be cancelled, but shall remain in full force and effect, until:

(a) the insurer has served on each proprietor and each mortgagee of whom the insurer has had notice in accordance with subsection (4) or (5) a notice to the effect that the policy shall lapse or be cancelled on the date specified in the notice, being a date not earlier than thirty days after the date on which the notice is served; and

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

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

(8) Where the insurer considers that default has been made under the principal insurance policy, whether in respect of the payment of premiums or otherwise, the insurer shall specify in the notice referred to in subsection (6)(a) the default complained of, and shall state that the lapsing or cancellation of the policy is conditional on the default not being remedied before the date specified in the notice.

(9) Unless all the proprietors by unanimous resolution otherwise resolve, 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, a mortgagee shall not be entitled to demand that part of that money be applied in or towards repayment of the mortgage debt.

(10) This section does not limit or affect the rights of a person in or to the proceeds of the principal insurance policy in pursuance of sections 49 to 52.

43. Additional insurance-(1) Sections 17 and 42 do not limit:

- (a) the right of a proprietor to effect a policy of insurance in respect of the destruction of or damage to the proprietor's unit; or
- (b) the right 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 a part of the sum secured to the mortgagee if the unit is destroyed or damaged.

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

(3) A mortgage redemption policy shall not 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 applies notwithstanding any rule of law to the contrary.

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

(2) The Court may, in its discretion on cause shown, appoint an administrator for:

- (a) an indefinite period; or
- (b) a fixed period,

on such terms and conditions as to remuneration or otherwise as it thinks fit and the remuneration and expenses of an administrator are an administrative expense within the meaning of this Act.

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

(4) An administrator may, in writing,:

- (a) delegate a power vested in him or her, other than this power of delegation; and
- (b) revoke such a delegation.

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

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

(7) This section does not permit an administrator to do anything which requires a unanimous resolution of the proprietors or to prevent the passing of such a resolution, but, without restricting the generality of subsection (3), the administrator shall, subject to any order of the Court, be entitled on the administrator's own initiative and to the exclusion of the body corporate, to do an act which under the rules may be done by special resolution.

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

45. Exercise of voting rights-(1) At a meeting of the body corporate, a power of voting shall not be exercised by:

- (a) a person who is less than 21 years of age but, except where a power of voting is conferred by paragraph (b), the power may be exercised on behalf of that person by a person appointed by a Judge of the District Court of Samoa for that purpose; and
 - (b) a person who is over the age of 18 years who is by any rule of law incompetent to deal with his or her property, but may be exercised on behalf of 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 are not affected by the fact that his or her interest in his or her unit is subject to a registered mortgage, but, on giving written notice to the body corporate, the mortgagee is entitled to exercise those rights:
- (a) in accordance with a provision to that effect in the mortgage; or
 - (b) so long as the mortgagee is in possession of the unit.
- (3) Where a person by whom a power of voting is exercisable is:
- (a) dead; or
 - (b) out of Samoa; or
 - (c) cannot be found,

and, for that reason or any other reason, it is impracticable to obtain the exercise by that person of that person's 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 an interested party, may by order:

- (d) declare that a person's power of voting shall be dispensed with either on a particular occasion or generally, in which case this Act or any rules as to voting shall have effect as if no power of voting were exercisable by that person on the particular occasion or generally, as the case may be; or

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

(4) On making an order under this section, the Court may make such provisions as it thinks necessary or expedient to give effect to the order, and may make such order for the payment of costs.

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

46. Relief in cases where unanimous resolution required – Where, in accordance with this Act or the rules of a body corporate, a unanimous resolution, or the consent, of all the proprietors is necessary before an act may be done and that resolution or consent is not obtained, but the resolution or act is supported by eighty per cent or more of those entitled to vote, a 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, in its absolute discretion, so orders, the resolution 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 – Where, in accordance with this Act or the rules of a body corporate, a resolution, other than a unanimous resolution, or the consent of a certain percentage of the voters is necessary before an act may be done, and that resolution is duly passed, or that consent is duly obtained, a 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, in its absolute discretion, so orders, the resolution shall be deemed not to have been passed or the consent shall be deemed not have been obtained as the case may be.

48. Redevelopment-(1) On a redevelopment, application shall be made to the Registrar for the deposit of a plan of redevelopment, being a new unit plan.

(2) A new unit plan shall be deposited under the same number as the existing unit plan, and section 22 applies accordingly.

(3) Subject to this section, a plan of redevelopment shall not be accepted by the Registrar for deposit unless it complies with all the requirements of this Act as to unit plans and, in addition:

- (a) defines the boundaries of the new units or the enlarged or reduced units; and
- (b) shows all new units, and any enlarged or reduced units, marked with numbers or letters not already used on the unit plan; and
- (c) bear a legend specifying which of the new units, enlarged units and reduced units are principal units and which are accessory units; and
- (d) in the case of a subdivision into two (2) or more new units, enlarged units, or reduced units - has endorsed on it 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 a recognised valuer.

(4) Subject to subsection (5), where a redevelopment involves the inclusion in a unit all or part of the common property or the erection of one (1) 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 reassessed by a recognised valuer, who shall assign to every such unit a new unit entitlement to be fixed by him or her 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 recognised valuer may, in his or her discretion, make the reassessment referred to in subsection (4) as at the date on which the current unit entitlements were fixed if he or

she considers that the redevelopment is of a relatively minor nature.

(6) A plan of redevelopment shall not be accepted by the Registrar for deposit unless:

- (a) the application to deposit the plan is made by the sole proprietor of the units, or by the proprietors of all the units pursuant of their unanimous resolution; and
- (b) every person who is entitled as mortgagee by virtue of a registered mortgage in respect of a unit affected by the redevelopment, and every caveator who claims an estate or interest in a unit affected by the redevelopment, being a caveator whose caveat was lodged with the Registrar before the application to deposit the plan, has given his or her written consent to the redevelopment; and
- (c) the lessor (if any) has consented to the redevelopment.

(7) On the deposit of a plan of redevelopment and the registration of any necessary transfers, the Registrar shall:

- (a) cancel the existing computer folio certificate to the units affected by the redevelopment; and
- (b) issue separate computer folio certificates in accordance with the plan of redevelopment for the units affected by the redevelopment.

49. Cancellation of plan on application of proprietors-(1) The Registrar may cancel a unit plan on the application of the proprietor or proprietors of all the units shown on the plan.

(2) An application under subsection (1) shall be in the prescribed form and have lodged with it:

- (a) any duplicate of any registered mortgage, charge, lease or sublease relating to each unit and the common property; and
- (b) evidence sufficient to satisfy the Registrar in relation to the matters specified in subsection (4); and

- (c) where the interest in the land of the proprietor of each unit is a unit estate in leasehold – evidence that the lessor has been notified of the intention to make the application.
- (3) Before cancelling the unit plan, the Registrar shall be satisfied that:
- (a) any administrator appointed under section 44 has consented to the cancellation; and
 - (b) no unit is subject to caveat, mortgage, charge, lease or sublease registered against the title to the unit.
- (4) The cancellation of a unit plan is effected when the Registrar has entered a memorandum of cancellation on the unit plan or its recorded copy and on any supplementary record sheet.
- (5) On 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 11 remains vested in those persons in the same shares as if the unit plan had not been cancelled; and
 - (b) the fee simple estate, or, as the case may be, the leasehold estate, in that part of the land which immediately before the cancellation comprised units, vests in the 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; and
 - (c) easements over each unit comprising part of the development determine.
- (6) Where two (2) or more persons were the proprietors of a unit, whether as joint tenants or tenants in common, the share in the land which vests in them under subsection (5), as between themselves, vests in them:
- (a) as joint tenants, if the unit of which they were the proprietors immediately before the cancellation was then vested in them as joint tenants; or

(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,
and the Registrar shall issue a computer folio certificate for the land to the persons entitled to it in accordance with paragraphs (a) and (b).

(7) On the cancellation of a unit plan, the body corporate is, subject to subsection (8), deemed to be dissolved, and, unless otherwise determined beforehand 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.

(8) On the cancellation of a unit plan the body corporate is 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 continues accordingly.

(9) The Registrar shall, on cancelling a unit plan:

- (a) give written notice that the plan has been cancelled and the body is dissolved to the Agency; and
- (b) cancel any relevant supplementary record sheet.

(10) For the purposes of the Land Titles Registration Act 2008, a supplementary record sheet cancelled under subsection (9)(b) is deemed to be a computer folio certificate issued under that Act in respect of the relevant land.

50. Application to Court for order for cancellation of plan-(1) Where, in respect of a unit plan, an application in that behalf is made to the Court by:

- (a) the body corporate; or
 - (b) an administrator appointed under section 44; or
 - (c) the proprietor or one (1) of the proprietors of a unit,
- and the Court is satisfied that, having regard to the rights and interests of any creditor of the body corporate and of every person who has an interest in a unit or in the land or part of it, it

is just and equitable that the body corporate be dissolved and the plan cancelled, the Court may make a declaration to that effect.

(2) Notice of an application under subsection (1) shall be served on:

- (a) each person who has an interest as a proprietor of a unit; and
- (b) the Registrar; and
- (c) each mortgagee, caveator, insurer and other person having a registered estate or interest in a unit of land to which the plan relates; and
- (d) any insurer who has effected insurance on the buildings of other improvements comprised in a unit or on the land or part of it,

and the Registrar shall enter on the supplementary record sheet a notification that the application has been so made.

(3) A notification entered under subsection (2) shall be cancelled by the Registrar if:

- (a) the applicant so requests and advises that the application to the Court is not proceeding; or
 - (b) the Registrar is satisfied that the Court has refused to make the declaration sought.
- (4) On an application to the Court under subsection (1):
- (a) a person having or claiming to have an estate or interest in a unit or in the land or part of it; and
 - (b) an insurer who has effected insurance on the buildings of other improvements comprised in a unit or on the land or part of it,

shall have the right to appear and be heard.

(5) Where the Court makes a declaration under subsection (1), the Court may by order impose such conditions and give such directions as it thinks fit for the purpose of giving effect to the declaration.

(6) Directions given under subsection (5) may include directions:

- (a) for the payment of money by or to the body corporate, and the distribution of the assets of the body corporate; and

(b) that any consent required by section 49(4), as applied by section 51(4), be dispensed with.

(7) The Court may, at any time before the unit plan is cancelled under section 51, vary or modify the terms of a declaration or order made by it under this section.

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

51. Cancellation of plan following decision of Court-(1) Where:

(a) the Court has made a declaration authorising the cancellation of a unit plan; and

(b) all conditions and directions imposed or given by the Court have been complied with,

an applicant for the declaration or his or her successor in title may, within six (6) months after the date of the declaration, apply to the Registrar for cancellation of the plan, and the Registrar shall cancel the plan accordingly.

(2) An application under subsection (1) shall be accompanied by:

(a) any duplicate instrument of every registered mortgage, charge, lease or sublease relating to each unit, the common property or part of it; and

(b) a copy of every declaration or order made by the Court under section 50 in relation to the body corporate or unit plan,

unless the Court otherwise directs or the Registrar dispenses with the production of a duplicate instrument.

(3) Where the Court makes a declaration under section 52(1) and:

(a) a person having custody or control of a duplicate instrument required for the purposes of an application for cancellation of a unit plan refuses or neglects to produce it for those purposes; or

(b) production of a duplicate instrument cannot be obtained because the person last known to have custody or control of it is dead, is out of Samoa or cannot be found; or

- (c) for any other reason it is impracticable to obtain production of a duplicate instrument,
- the Court, on the application of an interested person, may:
- (d) in an appropriate case, order, on such terms and conditions as it thinks fit, production of it to the Registrar by the person so refusing or neglecting; or
 - (e) in its discretion, order the Registrar to dispense with production.
- (4) The following provisions of section 49 apply when an application is made to the Registrar under this section, namely:
- (a) subsection (3), except to the extent that the Court otherwise directs, either on that application or on a subsequent application; and
 - (b) subsections (5) and (6), unless the Court otherwise directs; and
 - (c) subsections (4), (7) and (8).

52. Scheme following destruction or damage-(1) Where a building or other improvement comprised in a unit or on 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, the proprietor or one of the proprietors of a unit or a registered mortgagee of a unit, by order, settle a scheme which includes provision:

- (a) for the reinstatement in whole or in part of that 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 21 shall, so far as applicable, but subject to any order of the Court to the contrary, apply in respect of the transfer.
- (3) A notice of an application made under subsection (1) shall be served on the Registrar, who shall on receipt of the notice enter on the supplementary record sheet a notification that the application has been made.
- (4) On an application to the Court under subsection (1):
- (a) a person having or claiming to have an estate or interest in a unit or in the land or in part of it; or

(b) an insurer who has effected insurance on the buildings or other improvements comprised in a unit or in the land or part of it, 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; or
- (b) directing payment of money by or to the body corporate or by or to a person; or
- (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 cancel, vary, modify or discharge an order made by it under this section.

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

53. Joinder of actions - Where an application under section 50 or 52 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 (2) applications together.

54. 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 a document if it is sent by registered letter addressed to the body corporate at its address for service.

(3) If the address for the service of documents on the body corporate is altered, the body corporate shall at the time of that alteration:

- (a) alter the address displayed in accordance with subsection (1); and
- (b) send written notice of the alteration to the Registrar, who shall enter a notification of the change of address on the supplementary record sheet.

(4) In this section the term “document” includes a 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 a building or other improvement on the land which a person is required or authorised by any Act to serve shall, notwithstanding anything in any Act to the contrary, be served on the body corporate in the manner provided by this Act, and on that service the notice or order shall be deemed to have been duly served and the body corporate shall be deemed to be the person bound to comply with the notice or order.

55. Default by body corporate-(1) Any person may apply to the Court for an order compelling a body corporate to carry out a requirement or perform a duty imposed on it by or under this Act.

(2) Following an application under subsection (1) the Court may make such order as it thinks proper.

(3) If a body corporate defaults in complying with a requirement or duty imposed on it by this Act:

(a) the body corporate; and

(b) the secretary to the body corporate if he or she is knowingly a party to the default; and

(c) each member of the 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 40 penalty units.

56. Register of proprietors-(1) A body corporate shall cause a register to be kept of the proprietors of the units comprised in the unit plan.

(2) Notwithstanding anything to the contrary in this Act, where the proprietor of a unit comprised in a unit plan (in this section referred to as the transferor) transfers that unit to another person (in this section referred to as the transferee), until the body corporate is notified in writing of the transfer,:

(a) subject to subsection (3), the transferor shall remain liable to the body corporate for all contributions levied by the body corporate under section 17(2)(c) in respect of that unit; and

(b) subject to subsection (4), the transferee shall not be entitled to exercise the voting rights in respect of the unit, which shall remain exercisable by the transferor.

(3) Nothing in subsection (2)(a) restricts the right of the transferor to recover from the transferee amounts that he or she has paid in respect of contributions referred to in that subsection.

(4) At a general meeting of the body corporate, a transferee, may, with the consent of the other proprietors present at the meeting, exercise the voting rights referred to in subsection (2)(b).

57. Regulations - The Head of State, acting on the advice of Cabinet, may make regulations not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular providing for:

- (c) fees and charges for anything authorised by this Act; and
- (d) forms for the purposes of this Act.

58. Consequential amendment – In section 5(1) of the Land Titles Registration Act 2008, after paragraph (l), insert the following:

“(m) the Registrar may set up and maintain supplementary record sheets in relation to unit plans and bodies corporate in accordance with the provisions of the Unit Titles Act 2009.”.

**The Unit Titles Act 2009 is administered by the
Ministry of Natural Resources, Environment and Meteorology.**

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