

CONVEYANCING AND LAW OF PROPERTY.

No. 72 of 1962.

AN ACT to amend the *Conveyancing and Law of Property Act 1884*. [14 February 1963.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Conveyancing and Law of Property Act 1962*. Short title, citation, and commencement.

(2) The *Conveyancing and Law of Property Act 1884*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on the day on which the *Local Government Act 1962* commences.

2 After section nine of the Principal Act the following section is inserted in Part II:—

“9A—(1) Where—

- (a) the seisin in fee simple is united of two parcels of land of which there was theretofore separate seisin in fee simple; and
- (b) over or upon one of those parcels any easement or restriction then existed for the benefit of the other,

Revival of easement, &c., on disunity of seisin.

the provisions of this section apply when the seisin of the two parcels is to be disunited in fee simple.

“(2) There shall be implied, unless the contrary intention appears—

- (a) in any contract of sale of either parcel which leads to the disunity a provision that it is sold—
- (i) with all such rights and advantages as belonged to it; and
- (ii) with all such burdens and disadvantages as it was subject to,

when it belonged to the predecessor in title of the person in whom seisin was united as mentioned in subsection (1); and

(b) in the conveyance of either parcel which effects that disunity—

(i) such grants and reservations as will create afresh the easements; and

(ii) such covenants, conditions, and declarations of trust as will renew the restrictions,

to which the other parcel was subject for its benefit or it was subject for the other parcel's benefit, when it belonged to that predecessor.”.

3 After section eleven of the Principal Act the following section is inserted:—

“ 11A—(1) Where land is subject to a lease—

(a) the conveyance of a reversion in the land expectant on the determination of the lease; or

(b) the creation or conveyance of a rent-charge to issue or issuing out of the land,

shall be valid without any attornment of the lessee.

“(2) Nothing in subsection (1) of this section—

(a) affects the validity of any payment of rent by the lessee to the person making the conveyance or grant before notice of the conveyance or grant is given to him by the person entitled thereunder; or

(b) renders the lessee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the conveyance or grant before such notice is given to the lessee.

“(3) An attornment by the lessee in respect of any land to a person claiming to be entitled to the interest in the land of the lessor, if made without the consent of the lessor is void.

“(4) Subsection (3) of this section does not apply to an attornment—

(a) made pursuant to a judgment of a court of competent jurisdiction;

(b) to a mortgagee, by a lessee holding under a lease from the mortgagor where the right of redemption is barred; or

(c) to any person rightfully deriving title under the lessor.

“(5) An attornment by a lease of land to a stranger claiming title to the lessor's estate is void without the lessor's consent.

Provisions
as to
attornments
by tenants.
15 & 16 Geo.
5, c. 20, s. 151,
1919, No. 6
(N.S.W.),
s. 125.
Cf. 4 Anne,
c. 16, ss. 9,
10, 11 Geo. 2,
c. 19, s. 11.

“(6) Sections nine and ten of the Imperial Act referred to either as the fourth year of Queen Anne, Chapter 16, or of the fourth and fifth years of Queen Anne, Chapter 3, and section eleven of the Imperial Act of the eleventh year of King George the Second, Chapter 19, are repealed so far as they apply to this State.”.

4 Section seventy-one of the Principal Act is repealed and the following sections are substituted therefor:—

“71—(1) A covenant relating to land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them and shall have effect as if those successors and other persons were expressed. Benefit of covenant relating to land.
15 Geo. 5,
c. 20, s. 7B.

“(2) For the purposes of subsection (1) of this section, in connection with covenants restrictive of the use of land, ‘successors in title’ shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

“(3) This section applies to covenants made after the commencement of the *Local Government Act* 1962, but the repeal of this section as it stood at the commencement of that Act does not affect the completion of covenants made before the commencement of that Act.

“71A—(1) A covenant relating to land of a covenantor or capable of being bound by him, shall, unless a contrary intention is expressed— Burden of covenants relating to land.
Ibid., s. 79.

(a) be deemed to be made by the covenantor on behalf of himself, his successors in title, and the persons deriving title under him or them; and

(b) have effect as if such successors and other persons were expressed.

“(2) Subsection (1) of this section extends to a covenant to do some act relating to the land notwithstanding that the subject matter may not be in existence when the covenant is made.

“(3) For the purposes of this section, in connection with covenants restrictive of the use of land, ‘successors in title’ shall be deemed to include owners and occupiers for the time being of the land.

“(4) This section applies only to covenants made after its commencement.”.

5 After section seventy-five of the Principal Act the following sections are inserted in Part XI:—

“75A—(1) In this section chamber includes a suite of chambers. Conveyance of chambers, flats, &c.

“(2) In a conveyance of an estate in a chamber in a building—

- (a) there shall be implied—
 - (i) a grant of such easements as may be necessary for the reasonable enjoyment of the chamber; and
 - (ii) a reservation of such easements as may be necessary for the reasonable enjoyment of the rest of the building;
- (b) covenants binding the purchaser shall be deemed, unless the contrary intention appears, to be—
 - (i) intended to bind the owner for the time being of the chamber;
 - (ii) for the benefit and protection of the whole building and its curtilage and the other chambers therein and every part thereof; and
 - (iii) made with the vendor and the owners of the other chambers in the building; and
- (c) covenants binding the vendor shall be deemed, unless the contrary intention appears, to be—
 - (i) intended to bind the owner for the time being of any part of the building retained by the vendor; and
 - (ii) for the benefit and protection of the chamber conveyed.

“(3) If in a conveyance of an estate in a chamber or in a deed accompanying such a conveyance are set forth the short provisions contained in the sixth schedule, the long provisions respectively set forth thereunder shall be implied as fully and effectually as if they were set forth fully and in words at length in the conveyance or deed, except so far as they may be altered, and added to in the conveyance or deed and where the word ‘vendor’ or the word ‘purchaser’ is used it includes all and each of the vendors or purchasers as the case may be, if more than one, and implies a joint and several covenant on their behalf.

“(4) The rule of equity, known as the rule against perpetuities, does not extend to common law conditions.

“75B—(1) Where—

- (a) a chamber is owned by a person other than the owner of the underlying soil and the building containing that chamber; or
- (b) a building comprised in a stratum plan registered under Part XIA,

is destroyed, the estate of the owner of the chamber or of a flat in the building continues subject to this section.

“(2) Where a building of the kind mentioned in subsection (1) of this section is destroyed and the owners of the several parts of the building, including an owner of the underlying land who does not own a part of the building, do not agree on rebuilding, a court of equity may deal with them on the following principles:—

- (a) The building should be rebuilt, if it is reasonably possible, in the former or some other reasonable manner;
- (b) No owner should by his inaction deprive other owners of the benefit of their rights; and
- (c) The public interest requires that if the building is not to be rebuilt the land should become available for use unencumbered by rights to unoccupied space.

“(3) Without prejudice to the breadth of the jurisdiction conferred by subsection (2) of this section, in an action based on that subsection, the Court may, amongst other things—

(a) to get the building rebuilt—

- (i) settle the plans and specifications;
- (ii) give the carrying out of the rebuilding to one of the parties;
- (iii) authorize the borrowing of money and charge the several parts of the building with repayment;
- (iv) make a party elect between taking his part in the rebuilding and selling his interest; and
- (v) where the building is to be rebuilt in a different manner from before, vary the rights of the parties *inter se* with pecuniary adjustment where equitable; and

(b) where the building is not to be rebuilt—

- (i) order a sale of all interests in it or any one or more of them;
- (ii) vest the land in the parties or some of them as tenants in common; or
- (iii) divide the surface between the parties.

“(4) For the purposes of this section a building shall be deemed to be destroyed if through fire, earthquake, tempest, explosion, collapse, neglect, or other cause, it has become unusable wholly or in part.

“(5) Where a space above the surface of land—

- (a) is owned by a person who does not own the surface; and

(b) has been unoccupied for twelve years, it shall be deemed to have been occupied during that time and to be occupied thereafter by the occupier of the surface, to the intent that the rights of the owner of the space shall be barred as provided in the Acts for the limitation of actions.

“(6) For the purposes of subsection (5) of this section—

(a) no regard shall be had to any certificate of title under the *Real Property Act* 1862 issued in respect of the space while it remained unoccupied; and

(b) an action based on subsection (2) of this section to which the owner of the space is a party shall be deemed to be an action to recover possession of the space brought by him.

Repair and rebuilding of severally-owned buildings.

“75C—(1) Where a chamber in a building is owned by a person other than the owner of the rest of the building and one or other owner wishes repairs to be made both to his own part and other parts of the building or that the building be rebuilt wholly or in part, and cannot have his wish because of want of legal power or failure to reach agreement with the other owner, a court of equity may, if it considers that—

(a) the proposed works will be for the benefit of all persons having an estate or interest in the building and the land on which it stands and—

(i) any want of legal power to co-operate in any such person ought to be supplied; or

(ii) any refusal to co-operate cannot be justified; or

(b) unless the proposed works are done all, or a majority in number or interest, of such persons will face greater expense,

decree those works to be done.

“(2) To give effect to a decree under this section the Court may exercise any power conferred by subsection (3) of section seventy-five B.”.

6 After section seventy-five C of the Principal Act (inserted by section five of this Act) the following Part is inserted:—

“PART XIA.

“STRATUM TITLES.

“75D In this Part, unless the contrary intention appears—

‘building’ means a building comprised in a stratum plan;

‘common property’ means so much of the land comprised in a stratum plan as is not shown as a flat in the plan;

‘company’ means the company created by section seventy-five Q;

Interpretation.
No. 17, 1961
(N.S.W.),
s. 2.

'flat' means a storey of a building and includes—

- (a) a chamber and any portion of a storey; and
- (b) any portion of the site of the building,

that is or is intended to be a separate tenement;

'owner' means the person who for the time being has the present legal estate in a flat;

'person concerned' means—

- (a) a person appearing by the Register of Deeds or the register book under the *Real Property Act* 1862, as the case may be, to have an estate or interest in the common property; and
- (b) a person having an estate or interest (other than a charge for a tax, rates, or other statutory burden) that has been notified to the company;

'registered mortgage' means a mortgage registered in the Registry of Deeds or in the office of the Recorder of Titles;

'site' means the whole surface of the land comprised in a stratum plan;

'stratum plan' means a stratum plan registered under this Part;

'unanimous resolution' means a resolution unanimously passed at a duly convened meeting of the company at which all persons entitled to exercise the powers of voting conferred by or under this Part are present personally or by proxy at the time of the motion;

'unit entitlement' in respect of a flat means the unit entitlement of that flat specified in accordance with the provisions of section seventy-five U.

"75E—(1) Land may be divided wholly or in part into two or more strata by registering a stratum plan as provided in this Part. Division of strata. *Ibid.*, s. 2.

"(2) Subject to section six hundred and seventy-eight of the *Local Government Act* 1962, subsection (1) of this section allows, among other things—

- (a) the division of a building from the soil lying around and under it;
- (b) the division of a one-storey building;
- (c) the creation of a flat partly on one storey or level and partly on another; and
- (d) the creation of a flat consisting of part of the building and—
 - (i) part of the site not covered by the building; or
 - (ii) all the site not covered by the building subject to easements, covenants, and licences for the benefit of another flat,

but does not allow the division of land of which part is and part is not under the *Real Property Act* 1862.

“(3) Subject to the provisions of this section, a conveyance affecting a flat has the same effect as a similar conveyance affecting a block in a sealed plan in force under Division II of Part XVI of the *Local Government Act 1962*.

“(4) When the site is under the *Real Property Act 1862*, the stratum plan shall, for the purposes of that Act, be deemed upon registration to be embodied in the register book; and notwithstanding the provisions of that Act, an owner shall hold his flat and his share in the common property subject to any interests for the time being notified on the registered stratum plan and subject to any amendments to flats or common property shown on that plan.

“(5) Notwithstanding any provisions of the *Registration of Deeds Act 1934*, when the site is not under the *Real Property Act 1862*, the title taken by any person claiming under an assurance of a flat registered under that Act is subject to any interests for the time being notified on the registered stratum plan and subject to any amendments to flats or common property shown on that plan.

“(6) Easements and restrictions as to use implied by this Part shall take effect without any memorial or notification on folia of the register book constituting titles to the dominant or servient tenements or without registration under the *Registration of Deeds Act 1934*, as the case may be, and without any express indication of those tenements.

Stratum
plans.
Ibid., s. 4.

“75F—(1) A stratum plan shall—

- (a) delineate the external surface boundaries of the site and the location of the building in relation thereto;
- (b) bear a statement containing such particulars as may be necessary to identify the title to the site;
- (c) include a drawing illustrating the flats and distinguishing them by numbers or other symbols;
- (d) define the boundaries of each flat in the building by reference to floors, walls, and ceilings, without necessarily showing any bearings or dimensions of the flat;
- (e) show the approximate floor area of each flat in the building;
- (f) define any portions of the site not within the building that are or are intended to be separate tenements, alone or with a portion of the building;
- (g) be endorsed in accordance with section seventy-five U;
- (h) have endorsed on it the address at which documents may be served on the company in accordance with section seventy-five Z; and
- (i) contain such other features as may be prescribed.

“(2) Unless otherwise stipulated in the plan, the common boundary of a flat with another flat or with common property shall be the centre of the floor, wall, or ceiling, as the case may be.

“(3) A stratum plan lodged for registration shall be endorsed with or accompanied by a certificate—

- (a) of a registered surveyor, that the building shown on the plan is within the boundaries of the title stated in the plan;
- (b) of the town clerk or council clerk of the corporation that the subdivision shown in the plan has been approved by the council; and
- (c) pursuant to section four hundred and sixty of the *Local Government Act 1962*, in respect of building.

“(4) A stratum plan shall be registered as prescribed.

“75G In respect of each flat there shall be implied—

Support.
Ibid., s. 5

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

“75H Every owner is entitled to have his flat sheltered by all such parts of the building as are capable of affording shelter.

Shelter.
Ibid., s. 6

“(2) The right created by this section is an easement to which such parts of the building shall be subject.

“(3) The easement of shelter created by this section entitles the owner of the dominant tenement to enter on the servient tenement to replace, renew, or restore any shelter.

“75J In respect of each flat there shall be implied—

Services.
Ibid., s. 7.

- (a) in favour of the owner, and as appurtenant to his flat, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services through or by means of any pipes, wire, cables, or ducts for the time being existing in the land comprising the site to the extent to which those pipes, wires, cables, or ducts are capable of being used in connection with the enjoyment of that flat; and
- (b) as against the owner and to which his flat shall be subject, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services through or by means of any pipes, wires, cables, or ducts for the time being existing within that flat, as appurtenant to the common property and also to every other flat capable of enjoying such easements.

“75K All ancillary rights and obligations reasonably necessary to make them effective belong to easements implied or created by this Part.

Ancillary rights.
Ibid., s. 8.

Ownership
of common
property.

Ibid., s. 9 (1),
(2).

“75L—(1) The common property shall be held by the owners as tenants in common in shares proportional to the unit entitlement of their flats.

“(2) The Recorder of Titles shall in the certificate of title to a flat certify the owner’s share in the common property.

Disposition
of common
property.

Ibid., ss. 9
(3), 10.

“75M—(1) Except as otherwise provided in this section—

(a) no share in the common property may be disposed of except as appurtenant to the flat of the owner thereof; and

(b) an assurance of a flat operates to assure the share of the disposing party in the common property, without express reference thereto.

“(2) All the owners by unanimous resolution may direct the company to convey the common property, or any part thereof.

“(3) The company, if it is satisfied that the resolution was duly passed, and that all persons concerned have consented in writing to the proposed conveyance, shall execute the appropriate instrument, and thereupon—

(a) the instrument is valid and effective without execution by any person having an estate or interest in the common property; and

(b) the company’s receipt—

(i) is a sufficient discharge for; and

(ii) exonerates the person taking under the conveyance from responsibility for the application of,

the moneys expressed to have been received by it and is likewise a sufficient discharge and exoneration for all moneys payable to the company under the instrument.

“(4) Every conveyance executed under subsection (2) of this section shall be endorsed with or accompanied by a certificate under the company’s seal that the resolution was duly passed and that all necessary consents were given.

“(5) In favour of—

(a) a purchaser of the common property; and

(b) the Recorder of Titles, in the case of land under the *Real Property Act 1862*,

a certificate under subsection (4) is conclusive evidence of the facts stated therein.

“(6) Where common property conveyed under subsection (3) is under the provisions of the *Real Property Act 1862* the Recorder of Titles shall—

(a) in the case of a transfer, register the transfer by issuing to the transferee a certificate of title for the land transferred, and no notification of the transfer shall be made on any certificate of title or folium of the register-book; and

(b) in the case of a lease, register it as prescribed.

“(7) Upon lodgment for registration of a conveyance of common property, the Registrar of Deeds or the Recorder of

Titles shall, before issuing a certificate of title or registering the conveyance, as the case may be, amend the registered stratum plan by deleting therefrom the common property comprised in the conveyance.

“75N—(1) Where all the owners desire to dispose of all the land comprised in a stratum plan, whether or not the building thereon is habitable or in ruins or has been removed, they may, by unanimous resolution, direct the company to convey the land, and thereupon—

Disposition of site.
Cf. *ibid.*,
s. 11.

- (a) the company may convey the land; and
- (b) subsections (2) to (6) of section seventy-five M apply as if the land were the common property.

“(2) On the execution of a conveyance by the company pursuant to this section, the owners of the land thereby conveyed are entitled to the proceeds of sale in shares proportional to the unit entitlement of their respective flats.

“(3) Upon lodgment for registration of a conveyance by the company pursuant to this section, the Registrar of Deeds before registering the conveyance or, as the case requires, the Recorder of Titles before issuing a certificate of title shall make the prescribed entry on and cancel the stratum plan.

“(4) Where land under the *Real Property Act 1962* is conveyed by the company pursuant to this section—

- (a) the registered proprietors shall surrender to the Recorder of Titles their duplicate certificates of title for cancellation; and
- (b) the Recorder, after cancelling the folia of the register-book constituted by the certificates of title relating to the flats, shall register the transfer by issuing to the transferee a certificate of title for the land transferred.

“75P—(1) All the owners by unanimous resolution at a meeting convened by the company may direct the company—

Creation of easements and covenants.
Ibid., s. 12.

- (a) to execute on their behalf a grant of easement or a restrictive covenant burdening the land comprised in a stratum plan; and
- (b) to accept on their behalf a grant of easement or a restrictive covenant benefiting the land comprised in a stratum plan.

“(2) Upon such a resolution—

- (a) the company may execute the appropriate instrument; and
- (b) subsections (3), (4), and (5) of section seventy-five M apply as if the instrument dealt with the common property.

“(3) Upon lodgment for registration in the Lands' Titles Office of an instrument under this section, the Recorder of Titles shall register it by noting it on the stratum plan as prescribed.

“75Q—(1) Upon the registration of a stratum plan the owners shall be a body corporate by the name of “The Owners of [*the name of the building*]” with perpetual succession and a common seal.

Incorporation of tenants of freehold flats.
Cf. ibid.,
ss. 14, 15.

“(2) For the purpose of this section the name of the building shall be that appearing on the stratum plan and shall be in the form of—

- (a) the number of the building and the name of the street; or
 - (b) a name approved by the Registrar of Deeds or the Recorder of Titles, as the case requires,
- followed by the name of the city or town in or near which the building is.

“(3) The company may—

- (a) sue and be sued on any contract made by it;
- (b) sue for and in respect of any damage or injury to the common property caused by any person, whether an owner or not; and
- (c) be sued in respect of any matter connected with the land comprised in the stratum plan for which the owners are jointly liable.

“(4) The company shall, among other things—

- (a) enforce the by-laws;
- (b) control and manage the common property;
- (c) insure and keep insured the building to the replacement value thereof against fire and such other risks as may be prescribed unless the owners by unanimous resolution otherwise resolve;
- (d) effect such insurance as it is required by law to effect;
- (e) insure against such other risks as the owners may from time to time determine by special resolution in accordance with the by-laws;
- (f) subject to section seventy-five B, forthwith apply insurance moneys received by it in respect of damage to the building in rebuilding and reinstating the building so far as that may lawfully be effected;
- (g) pay premiums on any policies of insurance effected by it;
- (h) keep in a state of good and serviceable repair, and properly maintain, the common property;
- (i) comply with notices and orders of any competent public or local authority requiring repairs to or work to be done in respect of the land comprised in the stratum plan, or anything in, on, or over it; and
- (j) comply with any reasonable request for the names and addresses of the persons who are members of the council or the company.

“(5) The company for the purpose of effecting any insurance under paragraph (c) of subsection (4) shall be deemed to have an insurable interest to the replacement value of the building and for the purpose of effecting any other insurance under that subsection shall be deemed to have an insurable interest in the subject-matter of that insurance.

“(6) The company shall, among other things—

- (a) establish a fund for administrative expenses sufficient in the opinion of the company for the

control, management, and administration of the common property, for the payment of any premiums of insurance and the discharge of any other obligation of the company;

- (b) determine from time to time the amounts to be raised for those purposes;
- (c) raise amounts so determined by levying contributions on the owners in proportion to the unit entitlement of their respective flats; and
- (d) recover from any owner by action in any court of competent jurisdiction any sum of money expended by the company for repairs or work done by it or at its direction in complying with any notice or order of a competent public or local authority in respect of that owner's flat.

“(7) Subject to the provisions of subsection (8), any contributions to be levied by the company shall be due and payable on the passing of a resolution to that effect and in accordance with the terms of that resolution, and may be recovered by the company in an action in any court of competent jurisdiction from the owner entitled at the time when the resolution was passed and from the owner entitled at the time when the action was instituted both jointly and severally.

“(8) The company shall on the application of an owner or any person authorized in writing by him certify—

- (a) the amount of any contributions due or payable by the owner;
- (b) the manner in which the contribution is payable;
- (c) the extent to which the contribution has been paid by the owner; and
- (d) the amount of any tax or rate paid by the company pursuant to section seventy-five s and not recovered by it,

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

“(9) The policy of insurance authorized by this section and taken out by the company in respect of the building is not liable to be brought into contribution with any other policy of insurance save another policy authorized by this section in respect of the same building.

“(10) Where a person who lodges a stratum plan for registration desires that the owners shall not be a body corporate as provided by this section and lodges therewith drafts of the instruments he proposes to use to create the interests he intends purchasers to enjoy, the Registrar of Deeds or the Recorder of Titles, as the case requires, may if he is satisfied that those instruments as lodged or as amended by agreement will give purchasers and their successors in title reasonable enjoyment of their respective flats and that will make provision equivalent to that in the case of a body corporate for meeting obligations due to public and local authorities, by notification on the stratum plan, order that the owners shall not be such a body corporate.

“(11) Where an order is made under subsection (10) of this section instruments in the form of the drafts on which the order was made, or with the approval of the Registrar of Deeds or the Recorder of Titles, as the case requires, in some other form, shall be used by the person lodging the plan and his successors in title to convey their flats to the purchasers thereof and instruments in any other form shall be wholly without effect.

By-laws.

Cf. Ibid., s. 13.

“75R—(1) The company may make by-laws for its corporate affairs and for the control, management, use, and enjoyment of the flats, the common property, and the site.

“(2) The provisions set forth in the seventh schedule shall be deemed to be by-laws of the company and may be amended, repealed, or added to, but those contained in Part I thereof may be amended or repealed only by unanimous resolution.

“(3) No by-law or addition to or amendment or repeal of a by-law can operate to prohibit or restrict the devolution of flats or any conveyance or other dealing therewith or to destroy or modify any easement implied by this Act.

“(4) No amendment or repeal of a by-law contained in Part I of the seventh schedule has effect until the company has lodged a notification thereof in the prescribed form with the Registrar of Deeds or the Recorder of Titles, as the case may require.

“(5) The company shall on the application of an owner or any person authorized in writing by him to make available for inspection the by-laws for the time being in force.

“(6) The by-laws for the time being in force shall bind the company and the owners to the same extent as if the by-laws had respectively been signed and sealed by the company and each owner and contained covenants on the part of the company with each owner and on the part of each owner with every other owner and with the company to observe and perform all the provisions of the by-laws.

*Statutory
land charges.*

“75S. Where the expenses of a public or local authority or any other sum due to a public or local authority, not being a tax or rate, is a statutory charge on all or any part of the land comprised in a stratum plan, that authority shall, instead of that charge have a like charge on each flat of an amount bearing the same proportion to that charge as the unit entitlement of the respective flat bears to the aggregate unit entitlement of all the flats.

Insurance.

Ibid., s. 17.

“75T—(1) Where a building is insured to its replacement value an owner may effect a policy of insurance in respect of any damage to his flat in a sum equal to the amount secured, at the date of any loss referred to in the policy, by mortgages charged upon his flat.

“(2) Where any such policy of insurance is in force—

(a) payment shall be made by the insurer under the policy to the mortgagees whose interests are noted thereon in order of their respective priorities, subject to the terms and conditions of the policy;

- (b) subject to the terms and conditions of the policy, the insurer is liable to pay thereunder—
- (i) the value stated in the policy;
 - (ii) the amount of the loss; or
 - (iii) the amount sufficient, at the date of the loss, to discharge mortgages charged upon the lot,
- whichever is the least amount;
- (c) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage charged upon the flat the insurer is entitled to an assignment of that mortgage; and
- (d) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage charged upon the flat the insurer is entitled to a sub-mortgage of the mortgage to secure the amount so paid on terms and conditions agreed upon as provided in subsection (5) of this section, or, failing agreement, on the same terms and conditions as those contained in the mortgage by the owner.

“(3) Where a building is insured, or has been insured to less than its replacement value, an owner may—

- (a) effect a policy of insurance in respect of any damage to his flat in a sum equal to the replacement value of his flat less a sum representing the amount to which his flat is insured under any policy of insurance effected on the building; and
- (b) notwithstanding any existing policies, effect a policy of insurance in respect of damage to his flat in a sum equal to the amount secured, at the date of the loss referred to in the lastmentioned policy, by mortgages charged upon his flat, and the provisions of paragraphs (a), (b), (c), and (d) of subsection (2) of this section apply in respect of any payment pursuant to the last-mentioned policy.

“(4) For the purposes of subsection (3), the amount for which a flat is insured under a policy of insurance effected in respect of the building shall be determined by multiplying the value stated in the policy by the unit entitlement of the flat and dividing the product so obtained by the sum of the unit entitlement of all the flats in the building.

“(5) For the purposes of paragraph (d) of subsection (2) and of paragraph (b) of subsection (3) of this section any insurer or mortgagee may at any time, whether before or after a policy of insurance has been effected by an owner, agree upon the terms and conditions of the sub-mortgage.

“(6) Nothing in this section limits the right of an owner to insure against risks other than damage to his flat.

“(7) A policy of insurance authorized by this section and taken out by an owner in respect of damage to his lot is not

liable to be brought into contribution with any other policy of insurance save another policy authorized by this section and taken out in respect of damage to the same flat.

“(8) This section applies notwithstanding the provisions of the *Life Insurance Act 1774* or any other law relating to insurance.

“(9) In this section ‘owner’ includes in the case of land not under the *Real Property Act 1862* a mortgagor who would become owner on redemption of the mortgage.

Unit entitlement of flats. *Ibid.*, s. 18.

“75U—(1) Every plan lodged for registration as a stratum plan shall have an endorsement specifying in whole numbers the unit entitlement of each flat and a number equal to the aggregate unit entitlements of all the flats.

“(2) The unit entitlement so endorsed determines—

- (a) the voting rights of an owner;
- (b) the quantum of the undivided share of each owner in the common property; and
- (c) the proportion payable by each owner of contributions levied pursuant to subsection (6) of section seventy-five Q.

Destruction, &c., of the building. *Cf. ibid.*, s. 19.

“75V—(1) In proceedings under section seventy-five B or section seventy-five C in respect of land comprised in a stratum plan—

- (a) the company may be plaintiff or a co-plaintiff or a defendant;
- (b) the Court may, without prejudice to its powers under those sections, direct—
 - (i) the application of insurance money received by the company in respect of damage to the building or site;
 - (ii) payment of money by the company; or
 - (iii) an amendment of the stratum plan or the substitution therefor of a new stratum plan varying the rights of the parties; and
- (c) in proceedings under section seventy-five B the Court may—
 - (i) wind up the affairs of the company; and
 - (ii) where the company would otherwise cease to exist because the land ceased to be owned in severalty, prolong the company’s existence with the last former owners as members.

“(2) Where the Court makes an order as provided in subparagraph (iii) of paragraph (b) of subsection (1) it shall cause a copy of the order to be served on the Registrar of Deeds or the Recorder of Titles, as the case requires, and either may then refuse to receive any conveyance of a flat affected by the order until the stratum plan has been amended or a new plan has been lodged in substitution therefor.

Powers of entry by public or local authority. *Ibid.*, s. 22.

“75W—(1) Where a public or local authority or person authorized by it has a statutory right to enter upon any part of the land comprised in a stratum plan, that authority or person is entitled to enter upon any other part of the land to the extent

necessary or expedient to enable it or him to exercise its or his statutory powers.

“(2) Where a public or local authority desires to enter upon the land comprised in a stratum plan but is not sure to what part it should go, it may treat the company as owner of the land and the owners as occupiers and act accordingly in respect of entry on notice thereon.

“75x—(1) The company, a creditor of the company, or any person having an estate or interest in a flat may apply to the Court for appointment of an administrator.

Appointment of administrator. *Ibid.*, s. 23.

“(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 or otherwise as it thinks fit.

“(3) The remuneration and expenses of the administrator are payable out of the company’s fund for administrative expenses.

“(4) The administrator has, to the exclusion of the company, the powers and duties of the company or such of those powers and duties as the Court may order.

“(5) The administrator may delegate any of the powers so vested in him.

“(6) The Court may in its discretion on the application of the administrator or any person referred to in subsection (1) of this section remove or replace the administrator.

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

“75y—(1) Powers of voting conferred by or under this Part may be exercised—

Voting. *Ibid.*, ss. 24, 26.

(a) in the case of an owner who is an infant, by his guardian; and

(b) in the case of an owner who is for any reason unable to control his property, by the person who for the time being is authorized by law to control his property.

“(2) Where the Court upon the application of the company or of an owner is satisfied that there is no person able to vote in respect of a flat, the Court—

(a) shall, in cases where a unanimous resolution is required by this Part; and

(b) may in its discretion in any other case, appoint the Public Trustee or some other fit and proper person for the purpose of exercising such powers of voting under this Part as the Court shall determine.

“(3) The Court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of such notice.

“(4) On making an appointment under subsection (2), the Court may make such order as it thinks necessary or expedient to give effect to the appointment, including an order as to the payment of costs of the application, and may vary any order so made.

“(5) The powers of the Court under this section shall be exercised by the Master of the Supreme Court.

“(6) Where an owner’s interest is subject to a registered mortgage a power of voting conferred on an owner by or under this Part—

- (a) where a unanimous resolution is required, shall not be exercised by the owner, but shall be exercised by the registered mortgagee first entitled in priority; and
- (b) in other cases, may be exercised by the registered mortgagee first entitled in priority or in the case of land not under the *Real Property Act 1862* subject to a legal mortgage by the owner’s mortgagor, but shall not be exercised by a mortgagor when the mortgagee is present personally or by proxy.

“(7) Subsection (6) of this section does not apply unless the mortgagee has given written notice of his mortgage to the company.

Service of documents on company.
Ibid., s. 27.

“75Z—(1) The company shall cause to be continually available a receptacle suitable and suitably placed for purposes of postal delivery, with the name of the company clearly designated thereon.

“(2) A document may be served on the company or the council thereof by post enclosed in a prepaid letter addressed to the company or the council, as the case may be, at the address shown on the stratum plan, or by placing it in the receptacle referred to in subsection (1) of this section.

Bringing previously divided buildings under this Part.

“75ZA—(1) Where a building is divided in title wholly or in part into two or more strata, a stratum plan may be registered under this Part with the consent of all persons who between them could sell the land comprised in the plan.

“(2) The Registrar of Deeds shall require any person presenting a stratum plan for registration under this section to satisfy him that all necessary consents have been given, and if being so satisfied he registers the plan it is valid notwithstanding any want of consent, but a person whose consent was necessary and not given may recover the amount of any loss to him by reason of this section from the company.

“(3) Upon the registration of a stratum plan under this section—

- (a) all estates and interests inconsistent with the stratum plan and the consequence of its registration are determined; and
- (b) the Recorder of Titles shall, and the Registrar of Deeds may, cause all proper entries to show their determination to be made in the books and records under their control.

“(4) Where immediately before the registration of a stratum plan under this section a company exists for purposes similar to those of a company under this Part it shall cease to exist and—

- (a) all its rights and liabilities become rights and liabilities of the new company; and
- (b) actions, suits, and other proceedings to which it is a party continue with the new company in its.

place, and the title of the proceedings shall be changed accordingly by no other authority than this section.

“(5) Where a building is occupied wholly or in part in two or more strata and the occupiers have rights similar to those of owners by means of long leases or shares in a company, the Court may on the application of a lessee or shareholder in the building or of the company authorize the registration of a stratum plan for the building under this section as if the lessees or shareholders owned their flats and make provision for carrying accordingly the rights of all persons interested.

“75ZB Unity of seisin in two or more flats shall not destroy easements or restrictions implied or created by this Part, but on the cessation of such unity they shall continue in full force and effect as if the seisin had never been united. Unity of seisin not to affect easements, &c.

“75ZC The Governor may make regulations for the purposes of this Part.” Regulations.

7 After section ninety A of the Principal Act the following sections are inserted:—

“90B—(1) In this section the expressions ‘sealed plan’ and ‘legal subdivision’ have the same meaning as in Division II of Part XVI of the *Local Government Act 1962*. Subdivision of land.

“(2) In an assurance effecting the legal subdivision of land comprised in a sealed plan the land shall be described by reference to that plan.

“(3) An assurance of land comprised in and described by reference to a sealed plan shall, without any express mention and notwithstanding any contrary expression, assure that land together with and subject to any easements and profits a prender shown as appurtenant to and existing or to exist over that land over or as appurtenant to other land comprised in the sealed plan—

- (a) so that where land comprised in the sealed plan is under the *Real Property Act 1862* a reference to the sealed plan on the relevant folium of the register book under that Act shall be a sufficient notification for the purposes of that Act of easements and profits a prender shown on that plan; and
- (b) notwithstanding that the sealed plan comprises both land that is and land that is not under that Act and shows easements and profits a prender appurtenant to land that is under that Act over land that is not or the other way round.

“(4) A reference as mentioned in paragraph (a) of subsection (3) of this section is not conclusive evidence that the person named in the folium and the certificate of title of which it is the duplicate is entitled to an easement or profit a prender over land not under the *Real Property Act 1862*, section twenty-six of the *Real Property Act 1886* notwithstanding.

“(5) Where an assurance such as is mentioned in subsection (3) of this section is registered under the *Real Property Act 1862* and affects by virtue of that subsection land not under that Act it has the same effect with respect to that land as if it were a deed registered in the Registry of Deeds.

“(6) An assurance of land not under the *Real Property Act* 1862 and comprised in and described by reference to a sealed plan shall, where the sealed plan contains obligations touching and concerning the land and intended to be enforceable in equity by and against the respective assigns of the parties to the assurance, operate, without any express mention and notwithstanding any contrary expression, as if it contained the most effective covenant to that end between the parties.

“(7) Where an obligation contained in a sealed plan is of the kind mentioned in subsection (6) of this section and the vendor’s land to which the burden of the obligation is to be annexed is—

- (a) under the *Real Property Act* 1862 while the land assured is not, an instrument under section twenty-eight D of the *Real Property Act* 1886 shall be used to annex the burden to the vendor’s land; or
- (b) not under the *Real Property Act* 1862 while the land assured is under that Act, subsection (5) of section twenty-eight B of the *Real Property Act* 1886 operates to annex the burden to the vendor’s land as if the transfer on which the certificate of title is issued were a deed registered in the Registry of Deeds at the time when it was lodged in the office of the Recorder of Titles.

“(8) Failure to comply with subsection (2) of this section does not make the assurance used void but makes the vendor liable to a penalty of one hundred pounds.

Subdivision
of building.

“90C—(1) Where the fee in part of a building is sold so that the purchaser will acquire and the vendor will each keep part of the fee—

- (a) the vendor shall be deemed to have agreed—
 - (i) to covenant not to disfigure the outside, to repair, to permit repairs, to repair downpipes, to repair the roof, to provide services, and to secure similar covenants from assigns; and
 - (ii) unless the tenants in fee of the building are, or will become, a body corporate, to declare himself a trustee for all persons concerned; and
- (b) the purchaser shall be deemed to have agreed—
 - (i) to covenant not to disfigure the outside, to repair, to permit repairs, to contribute to repairs, to insure, to permit inspection, to repair downpipes, to secure similar covenants from assigns, and, unless the tenants in fee of the building are, or will become, a body corporate, to pay his share of the rates; and

- (ii) that in the conveyance it may be provided that the vendor may re-enter,

except so far as it may be otherwise inferred from the nature of the transaction or provided in the contract for sale.

“(2) This section does not apply to land comprised in a stratum plan registered under Part XIA.

“90D—(1) Where any land is affected by a restriction arising by condition or covenant as to the use thereof, a person interested therein may apply to the Recorder of Titles to discharge or modify the restriction, and shall give him such information about the matter as he requires.

Discharge and modification of restrictive covenants and determination whether restrictive covenants in force.

“(2) If the Recorder of Titles is satisfied—

Cf. 15 Geo. 5, c. 20, s. 84 (2).

- (a) that, by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which he may deem material—

- (i) the restriction has become obsolete; or
 (ii) the continued existence thereof would impede the reasonable use of the land without securing practical benefits to other persons, or, as the case may be, would unless modified so impede such use;

*Proposed
Amendment*

- (b) the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed have agreed either expressly or by implication by their acts or omissions to the discharge or modification of the restriction; or
 (c) that the proposed discharge or modification will not injure the persons entitled to the benefit of restriction,

he may make an order wholly or partly discharging or modifying the restriction, subject or not to the applicant's payment of compensation to any person suffering loss in consequence of the order.

“(3) Compensation is not payable in respect of the discharge or modification of a restriction—

- (a) by reason of any advantage thereby accruing to the owner of the land affected by the restriction unless the person entitled to the benefit of the restriction also suffers loss in consequence of the discharge or modification; or
 (b) in excess of such loss.

“(4) Subsection (3) does not affect any right to compensation where the person claiming the compensation proves that by reason of the imposition of the restriction the amount of consideration paid for the acquisition of the land was reduced.

“(5) The Recorder of Titles may on the application of any interested person declare—

- (a) whether or not any land is affected by a restriction imposed by any instrument; or
- (b) what, on the true construction of an instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether it is enforceable and if so by whom,

and may provide for the costs of the parties to the proceedings on the application.

“(6) The municipality has an interest in all land for the purposes of this section.

“(7) The Recorder of Titles may before making an order or declaration under this section—

- (a) make such inquiries (if any) of a local authority; or
- (b) give such notices (if any), whether by way of advertisement or otherwise, to such of the persons who appear to be entitled to the benefit of the restriction intended to be discharged, modified, or dealt with,

as, having regard to any inquiries, notices, or other proceedings previously made, given, or taken, the Recorder thinks fit.

“(8) An order or declaration made under this section is binding on all persons whether—

- (a) they are—
 - (i) ascertained;
 - (ii) of full age; or
 - (iii) of full capacity, or not;
- (b) they are—
 - (i) then entitled; or
 - (ii) thereafter capable of becoming entitled, to the benefit of any restriction which is thereby discharged, modified, or dealt with; or
- (c) they—
 - (i) are parties to the proceedings; or
 - (ii) have been served with notice thereof, or not.

“(9) An order or declaration may be made under this section notwithstanding that an instrument which is alleged to impose the restriction intended to be discharged, modified, or dealt with has not been produced to the Recorder, who may act on any evidence of the instrument as he thinks fit.

“(10) A memorandum of proceedings under this section and their determination made on paper and under the seal of the Recorder of Titles and filed—

- (a) in the case of land not under the *Real Property Act 1862* in the Registry of Deeds; or
- (b) in the case of land under that Act, in the office of the Recorder of Titles,

shall be deemed to be a record duly enrolled.

“(11) When an order or declaration is made under this section the Recorder of Titles may—

- (a) in the case of land not under the *Real Property Act* 1862, make up and register a memorial of the declaration; and
- (b) in the case of land under that Act, enter a notification of the declaration on the folium of the register book containing the title to the land.

“(12) For the purpose of proceedings under this section, the Governor may make regulations—

- (a) prescribing the procedure and forms to be used;
- (b) prescribing the fees to be paid;
- (c) providing for summoning witnesses and compelling them to give evidence and produce documents;
- (d) providing for the answering of inquiries in writing; and
- (e) conferring on the Recorder of Titles any power of a judge presiding at a trial or sitting in chambers, including the power to make a representative order.

“(13) For the purpose of enforcing an order for compensation or costs under this section an office copy of the record containing the order may be filed in the Supreme Court and the order may then be enforced as a judgment of the Supreme Court.

“(14) An applicant for an order under subsection (2) may, if he cannot ascertain who can give him a good discharge for compensation payable thereunder, pay the amount thereof into the Supreme Court to the credit of the owner of the land, specifying it, to abide the order of the Court.

“(15) The Supreme Court may—

- (a) hear and determine appeals from decisions of the Recorder of Titles under this section; and
- (b) on the application of any interested person remove proceedings before him into the Court and thereupon exercise as well as its own powers all powers conferred on him by this section.

“(16) If a person not a party to proceedings under this section before the Recorder of Titles is adversely affected by the determination of those proceedings his remedy is—

- (a) if an appeal to the Supreme Court is pending and unheard, to be made a party to the appeal by order of the Supreme Court or a judge in chambers; or
- (b) in any other case, by action in the Supreme Court to bring up and review the order or declaration of the Recorder of Titles.

“(17) The jurisdiction to hear and determine appeals conferred by subsection (15) of this section shall not be exercised in chambers.

Insurance money from burnt building may be laid out on rebuilding.
Cf. 14 Geo. 3, c. 78, s. 83.

“90E Where a building is destroyed or damaged by fire a person who has granted a policy of insurance for insuring it against fire may, and shall, on the request of a person interested in or entitled to the building, cause the money for which the building is insured to be laid out and expended, so far as it will go, towards rebuilding, reinstating, or repairing the building, unless—

- (a) the person claiming the insurance money within thirty days next after his claim is adjusted, gives sufficient security to the person who has granted that policy that the insurance money will be so laid out and expended; or
- (b) the insurance money is in that time settled and disposed of to and amongst the contending parties to the satisfaction and approbation of the person who has granted the policy of insurance.”.

The second schedule.

8 At the end of the second schedule to the Principal Act the following form is inserted:—

“V.—*Conveyance of flat in building under Part XI A.*

This Indenture made the _____ day of _____ 19____ between A. of [&c.] _____ hereinafter called “the vendor” of the one part and B. of [&c.] _____ hereinafter called “the purchaser” of the other part Whereas a certain building is comprised in a stratum plan registered in the Registry of Deeds and numbered _____ Now this indenture witnesseth that in consideration of the sum of £ _____ paid by the purchaser to the vendor receipt whereof the vendor hereby acknowledges the vendor as beneficial owner hereby conveys and confirms to the purchaser flat No. _____ shown on the said stratum plan to hold unto and to the use of the purchaser in fee simple. In witness &c.”.

The fourth schedule.

9 The fourth schedule to the Principal Act is amended by inserting after the numeral “9,” the numeral “9A.”

The fifth schedule.

10 The fifth schedule to the Principal Act is amended by inserting, after paragraph 6, the following paragraph:—

“6A The words ‘will insure in accordance with section seventy-five T of the *Conveyancing and Law of Property Act 1884*’ shall imply.—That so far as the building comprised in the said stratum plan is not at all times insured to its full replacement value against loss or damage by fire he will during the continuance of this security keep the premises insured in the name of the mortgagee against loss or damage by fire to the full amount permitted by subsection (3) of section seventy-five T of the *Conveyancing and Law of Property Act 1884* in some public insurance office in Tasmania to be approved of by the mortgagee and will pay all premiums and moneys necessary for such purpose on the first day on which the same respectively ought to be paid, and will deliver to the mortgagee the policy of such insurance and the receipt for every such payment. And that if the mortgagor shall at any

time refuse or neglect to deliver any such policy or receipt as aforesaid the mortgagee shall be entitled to assume that the said premises are not insured in accordance with the covenant hereinbefore contained and to exercise the powers conferred by the *Conveyancing and Law of Property Act 1884* in that behalf.”.

11 After the fifth schedule to the Principal Act the following schedules are inserted:—

“ THE SIXTH SCHEDULE.

(Section 75A.)

The sixth
and seventh
schedules.

1. *Short provision.*

To use the premises only as a dwelling.

Long provision.

Not to use the premises nor permit them to be used for any purpose other than as a private dwelling for one family nor for any purpose from which a nuisance can arise to the owners and occupiers of the other flats in the building of which the premises are part or of dwellings in the neighbourhood of that building nor for an illegal or immoral purpose.

2. *Short provision.*

Not to disfigure the outside.

Long provision.

Not to redecorate the exterior of the premises otherwise than in a manner agreed to by a majority of the owners or lessees of the flats in the building of which the premises are part or, failing such agreement, in the manner as near as may be in which the premises were previously decorated, and not to put any name, writing, drawing, sign-board, plate, or placard on or in any window on the exterior of the premises.

3. *Short provision.*

To repair.

Long provision.

Subject to contribution and payment as in these presents provided, to maintain, repair, re-decorate, and renew, so far as they are part of the premises—

- (a) the main structure and in particular the roof, chimneys, gutters and rain-water pipes, the gas and water pipes, drains, wireless aerials, and electric cables and wires not enjoyed or used by the purchaser solely for his own benefit;
- (b) the gas and water pipes, drains and electric and telephone cables and wires enjoyed or used by the purchaser in common with the owners and lessees of the other flats;
- (c) the entrances, passages, landing, and staircases enjoyed or used by the purchaser in common with the owners and lessees of the other flats; and
- (d) the boundary walls and fences,

of or in the buildings of which the premises are part, and to keep the premises other than the parts in this covenant beforementioned and all walls, party walls, sewers, drains, pipes, wireless aerials, cables, wires, and appurtenances thereto belonging in good and tenantable repair and condition and in particular but without prejudice to the generality of the foregoing so as to support, shelter, and protect the other parts of the building of which the premises are part.

4. *Short provision.*

To permit repairs.

Long provision.

To permit the vendor and his surveyor or agent with or without workmen and others at all reasonable times upon notice to enter into and upon the premises or any part thereof for the purpose of—

- (a) viewing and examining the state and condition thereof and making good all defects, decays, and wants of repair of which notice in writing has been given by the vendor to the purchaser and for which the purchaser is liable under these presents within three months after the giving of such notice;
- (b) repairing any part of the building of which the premises are part;
- (c) making, repairing, maintaining, re-building, cleansing, lighting, and keeping in good order and condition all sewers, drains, pipes, wireless aerials, cables, water-courses, gutters, wires, party structures, or other conveniences belonging to or serving or used for that building; and
- (d) laying down, maintaining, repairing, and testing drainage, gas and water pipes, and telephone and electric wires and cables and similar things.

5. *Short provision.*

To contribute to repairs.

Long provision.

To contribute and pay a proportion equal to the ratio between the annual value of the premises and the annual value of the whole building of which the premises are part, together with its curtilage, of the cost and expenses of—

- (a) maintaining, repairing, redecorating, and renewing—
 - (i) the main structure and in particular the roof, chimneys, gutters, and rain-water pipes;
 - (ii) the gas and water pipes, drains, wireless aerials, and telephone and electric cables and wires enjoyed or used by the purchaser in common with the owners and lessees of the other flats;
 - (iii) the entrances, passages, landings, and staircases enjoyed or used by the purchaser in common with the owners and lessees of the other flats; and
 - (iv) the boundary walls and fences, of or in the building of which the premises are part;
- (b) cleaning and lighting all portions of the building of which the premises are part enjoyed or used by the purchaser in common with the owners and lessees of the other flats in the building; and
- (c) decorating the exterior of the building.

6. *Short provision.*

To insure.

Long provision.

To insure and keep insured the premises against loss or damage by fire, flood, storm, or tempest in the full value thereof and, whenever required, produce to the vendor the policy or policies of such insurance and the receipt for the last premium therefor, and if the premises are damaged or destroyed by fire, flood, storm, or tempest as soon as reasonably practicable to lay out the insurance moneys in the repair, rebuilding, or reinstatement of the premises.

7. *Short provision.*

Not to commit a nuisance.

Long provision.

Not to throw or permit to be thrown dirt, rubbish, rags, or other refuse into the sinks, baths, lavatories, cisterns, or waste or soil pipes in the premises; not to play or permit to be played any piano, pianola, gramophone, wireless set, or mechanical or other musical instrument of any kind so as to cause annoyance to the owners, lessees, or occupiers of other parts of the building of which the premises are part or so as to be audible outside the premises between the hours of 11 p.m. and 9 a.m.; not to create or suffer his family or guests to create a disturbance in any part of the building of which the premises are part or the grounds thereof over which he has an easement between those hours; not to shake or permit to be shaken any mat out of the windows of those premises; and not to keep on the premises a bird, dog, or other animal which may cause annoyance to any owners, lessees, or occupier of any part of the building of which the premises are part.

8. *Short provision.*

To permit inspection.

Long provision.

To permit the vendor and his surveyor or agent, with or without workmen and others, at all reasonable times, upon notice, to enter into and upon the premises or any part thereof for the purpose of—

- (a) repairing any part of the building of which the premises are part;
- (b) making, repairing, maintaining, rebuilding, cleansing, lighting, and keeping in order and good condition all sewers, drains, pipes, cables, water-courses, gutters, wires, party structures, and other conveniences belonging to or serving or used for that building;
- (c) laying down, maintaining, repairing, and testing drainage, gas and water pipes, wireless aerials, and electric and telephone wires and cables,

and similar purposes.

9. *Short provision.*

To repair downpipes.

Long provision.

To put, keep, and maintain in good and safe repair and condition the external waste waterways and soil pipes in or upon the premises.

10. *Short provision.*

To repair the roof.

Long provision.

To put, keep, and maintain in good and safe repair and condition the roof of the premises together with the chimneys thereon, the openings therein and the spouting thereof.

11. *Short provision.*

To permit a wireless aerial.

Long provision.

To allow access to the roof to the owner, lessee, or occupier of any part of the building of which the premises are part for the purpose of erecting, maintaining, repairing, or removing a wireless or television aerial and to allow wires from such an aerial to be led therefrom to that part of the building.

12. *Short provision.*

To keep up the grounds.

Long provision.

To keep the grounds of the building of which the premises are part in order and in a safe and tidy condition, keeping the lawns therein mown and preserving and replacing trees, shrubs, plants, and herbs therein so as to keep those grounds in reasonable order and condition in respect of things grown therein.

13. *Short provision.*

To provide services.

Long provision.

To continue for the benefit of the premises and persons living in or visiting them such services as are now provided thereto.

14. *Short provision.*

To secure similar covenants from assigns.

Long provision.

To require every person to whom he transfers or leases the premises to covenant with him as trustee for all persons concerned to perform all the covenants by which he is bound under these presents.

15. *Short provision.*

To pay his share of the rates.

Long provision.

To contribute and pay a proportion equal to the ratio between the annual value of the premises and the annual value of the whole building of which the premises are part, together with its curtilage, of all State and Federal taxes and municipal rates and charges charged upon that building, together with its curtilage, and for which the premises are not separately assessed.

16. *Short provision.*

Provided that the vendor may re-enter.

Long provision.

Provided always that if the purchaser shall fail to observe, perform, or fulfil covenants on his behalf contained in these presents or any of them, in any such case and as often as it shall happen, the vendor may, without prejudice to any other remedy, right, or power available to the vendor in respect of the default and notwithstanding any actual or constructive waiver of any previous cause or right of entry or re-entry or of any other right or claim on the part of the vendor to enter upon the premises or any part thereof in the name of the whole and thereafter at the option of the vendor—

- (a) thenceforth to hold, possess, and enjoy the premises in fee simple free from encumbrances; or
- (b) to execute and do such works, acts, and things (if any) on the premises as shall be necessary or proper for repairing, rebuilding, or insuring them in accordance with the said covenants on the part of the purchaser and to remain in the possession or receipt of the rents and profits thereof until thereby or otherwise all sums of money expended by the vendor in or about those works, acts, and things or in insuring the premises and all sums of money due to be contributed and paid by the purchaser under these presents, together with all costs and expenses occasioned by the exercise of this power be fully paid and satisfied.

17. *Short provision.*

The vendor declares himself a trustee for all persons concerned.

Long provision.

The vendor declares that he himself is trustee for the purchaser and the vendor and their successors in title as owners of the several parts of the building of which the premises are part of—

- (a) such parts of that building and its curtilage as are subject to easements for the common benefit of any two or more flats in that building; and
- (b) the benefit of the covenants similar to the purchaser's covenants contained in these presents entered into or to be entered into by the transferees or lessees of the other flats in that building and the benefits of the rights to enter and re-enter similar to those contained in these presents reserved or to be reserved in the transfers or leases to the transferees or lessees of those other flats.

18. *Short provision.*

To provide covenants similar to the purchaser's.

Long provision.

To do nothing on or in respect of the building of which the premises are part and its curtilage that, if done by the purchaser on or in respect of the premises, would be a breach of a covenant by which the purchaser is bound under these presents; to require every person to whom he transfers or leases any part of that building and its curtilage to covenant with him as trustee for all persons concerned to perform all the covenants by which the vendor is bound under these presents, and to do nothing on or in respect of the part so transferred or leased that, if done by the purchaser on or in respect of the premises, would be a breach of a covenant by which the purchaser is so bound; and so far as he, the vendor, or his predecessors in title have transferred or leased any such part without having obtained as trustee for all persons concerned from the transferee or lessee thereof such covenants as he would by these presents be bound to require if such transfer or lease had been made hereafter and not heretofore, to obtain from each one of such transferees and lessees (if any) such covenants as trustee for all persons concerned.

“ THE SEVENTH SCHEDULE.

(Section 75R.)

PART I.

1. An owner shall—

Duties of
an owner.

- (a) permit the company and its agents, at all reasonable times on notice (except in case of emergency when no notice shall be required), to enter his flat for the purpose of maintaining, repairing, or renewing pipes, wires, cables, and ducts for the time being existing in the flat and capable of being used in connection with the enjoyment of any other flat or the common property, or for the purpose of maintaining, repairing, or renewing the common property;
- (b) forthwith carry out all work that may be ordered by any competent public or local authority in respect of his flat other than such work as may be for the benefit of the building generally and pay all rates, taxes, charges, outgoings, and assessments that may be payable in respect of his flat;
- (c) repair and maintain his flat and keep it in a state of good repair, reasonable wear and tear, and damage by fire, storm, tempest, or act of God excepted;
- (d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other owners or their families or visitors; and
- (e) not use his flat or permit it to be used in such manner or for such purpose as causes a nuisance to any occupier of a flat (whether an owner or not) or the family of such occupier.

2. The company shall—

Duties of
company.

- (a) control and manage the common property for the benefit of all owners;
- (b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings (including lifts) used in connection with the common property;
- (c) establish and maintain suitable lawns and gardens on the common property;
- (d) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables, and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one flat or common property; and
- (e) on the written request of an owner, or registered mortgagee of a flat, produce to that owner or mortgagee, or person authorized in writing by that owner or mort-

gagee, the policy or policies of insurance effected by the company, and the receipt or receipts for the last premium or premiums in respect thereof.

Powers of
company.

3. The company may—

- (a) purchase, hire, or otherwise acquire personal property for use by owners in connection with their enjoyment of common property;
- (b) borrow moneys required by it in the performance of its duties or the exercise of its powers;
- (c) secure the repayment of moneys borrowed by it, and the payment of interest thereon, by negotiable instrument, or mortgage of unpaid contributions (whether imposed or not), or mortgage of any property vested in it, or by combination of those means;
- (d) invest as it may determine any moneys in the fund for administrative expenses;
- (e) make an agreement with any owner or occupier of a flat for the provision of amenities or services by it to that flat or to the owner or occupier thereof;
- (f) grant to an owner the right to exclusive use and enjoyment of common property, or special privileges in respect thereof, but any such grant shall be determinable on reasonable notice unless the company by unanimous resolution otherwise resolves; and
- (g) do all things reasonably necessary for the enforcement of the by-laws and the control and management of the common property.

Council of
the company.

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

(2) The council shall consist of not less than three nor more than seven owners and shall be elected at each annual general meeting; but where there are not more than three owners, the council shall consist of all owners.

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

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

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

(6) At the commencement of each meeting the council shall elect a chairman for the meeting.

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

(8) The council may—

- (a) meet together for the conduct of business, adjourn, and otherwise regulate its meetings as it thinks fit, but shall meet when any member gives to the other members seven days' notice of a meeting proposed by him, specifying the reason for calling it;
- (b) employ for and on behalf of the company such agents and servants as it thinks fit in connection with the control and management of the common property, and the exercise and performance of the powers and duties of the company;
- (c) subject to any restriction imposed or direction given at a general meeting, delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke the delegation.

(9) The council shall—

- (a) keep minutes of its proceedings;
- (b) cause minutes to be kept of general meetings;

- (c) cause proper books of account to be kept in respect of all sums of money received and expended by it and the matters in respect of which such receipt and expenditure take place;
- (d) prepare proper accounts relating to all moneys of the company, and the income and expenditure thereof, for each annual general meeting; and
- (e) on application of an owner or mortgagee, or any person authorized in writing by him, make the books of account available for inspection at all reasonable times.

(10) All acts done in good faith by the council shall notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, be as valid as if that member had been duly appointed or had duly continued in office.

5.—(1) A general meeting of owners shall be held within three months after their incorporation. General meetings.

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

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

(4) The council may, whenever it thinks fit, and shall upon a requisition in writing made by owners entitled to a quarter of the total unit entitlement of the flats in the building convene an extraordinary general meeting.

(5) Seven days' notice of every general meeting specifying the place, the date, and the hour of meeting, and in case of special business the general nature of that business, shall be given to all owners and their mortgagors in possession and registered first mortgagees who have notified their interests to the company; but accidental omission to give such notice to any owner, mortgagor, or registered first mortgagee or non-receipt of such notice by any such person does not invalidate any proceedings at any such meeting.

6.—(1) All business shall be deemed special that is transacted at an annual general meeting with the exception of the consideration of accounts and election of members of the council, or at an extraordinary general meeting. Proceedings at general meetings.

(2) Save as in the by-laws otherwise provided, no business may be transacted at any general meeting unless a quorum of members is present at the time the meeting proceeds to business.

(3) One-half of the persons entitled to vote present in person or by proxy constitutes a quorum.

(4) If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the persons entitled to vote and present constitute a quorum.

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

(6) At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by any owner present in person or by proxy.

(7) Unless a poll be so demanded a declaration by the chairman that a resolution has on the show of hands been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(8) A demand for a poll may be withdrawn.

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

(10) In the case of equality of votes whether on a show of hands on or a poll the question is determined in the negative.

Votes of owners.

7.—(1) On a show of hands each owner shall have one vote.

(2) On a poll the owners shall have the same number of votes as the unit entitlements of their respective flats.

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

(4) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting.

(5) A proxy need not be a proprietor.

(6) Except in cases where a unanimous resolution is required, no owner is entitled to vote at any general meeting unless all contributions payable in respect of his flat have been duly paid.

(7) Co-owners may vote by proxy jointly appointed by them, and in the absence of such a proxy are not entitled to vote on a show of hands, except when the unanimous resolution of owners is required; but any one co-owner may demand a poll.

(8) On any poll each co-owner is entitled to such part of the vote applicable to a flat as is proportionate to his interest in the flat.

(9) The joint proxy (if any) on a poll has a vote proportionate to the interest in the flat of such of the joint owners as do not vote personally or by individual proxy.

(10) Where owners are entitled to successive interests in a flat, the owner entitled to the first interest is alone entitled to vote, whether on a show of hands or a poll whether the unanimous resolution of owners is required or not.

(11) Where an owner is a trustee he shall exercise the voting rights in respect of the flat to the exclusion of persons beneficially interested in the trust, and the latter shall not vote.

Common seal.

8. The common seal shall at no time be used except by authority of the council previously given and in the presence of the members of the council or at least two members thereof, who shall sign every instrument to which the seal is affixed.

Amendment of by-laws.

9. The by-laws in Part II of this schedule may be amended by special resolution of the company, and not otherwise.

Special resolution.

10. A special resolution means a resolution passed at a general meeting of which at least fourteen days' notice specifying the proposed special resolution has been given by a majority of not less than three-quarters of the total unit entitlement of all flats in the building, not being less than three-quarters of the members.

PART II.

Additional duties of proprietors.

1. An owner shall not—

(a) use his flat for any purpose which may be illegal or injurious to the reputation of the building;

(b) make undue noise in or about any flat or common property; or

(c) keep any animals on his flat or the common property after notice in that behalf from the council.

Restricted use of flat.

2. When the purpose for which a flat is intended to be used is shown expressly or by necessary implication on or by the registered stratum plan, a proprietor shall not use his flat for any other purpose, or permit it so to be used."