

## FLAT AND OFFICE OWNERSHIP BILL

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### EXPLANATORY NOTE

THE purpose of this Bill is to make better provision for the ownership of flats and offices. It is adapted from the Strata Titles Act 1967 of Victoria and the Conveyancing (Strata Titles) Act 1961 of New South Wales. It provides for strata estates and strata plans. Provision is made for bringing existing flat or office owning schemes under the legislation, and for the rules that are to apply where a block of flats or offices is destroyed or a scheme relating to them is terminated.

A feature of the scheme so far as it relates to strata estates in freehold is that no interest in the land, or in the units and common property, vests at any stage in the body corporate which is created. *Clause 11* prevents the body corporate in all cases from giving a mortgage over the whole property. It is contemplated that initial purchasers of the units will require that any existing mortgage, especially a mortgage which was raised to finance the whole scheme, will be discharged as to their individual units before they take title; that purchasers from the promoters of the scheme will thus have clear titles to the units which can be mortgaged to help finance the purchase of their units; and that payments will be made to the mortgagee under the head mortgage, out of the purchase money in respect of individual units, as consideration for the release of the units from that mortgage.

*Clause 1* sets out the Short Title and the date of the commencement of the Bill. It is to come into force on 1 April 1973.

*Clause 2* defines terms used in the Bill.

### PART I

#### STRATA ESTATES

*Clause 3* provides that the registered proprietor of an estate in fee simple in a parcel of land under the Land Transfer Act 1952, or of an estate as lessee under a memorandum of lease registered under that Act in respect of a parcel of land, or of an estate as lessee or licensee under a lease or licence from the Crown registered under that Act in respect of a parcel of land, may subdivide that parcel of land, in accordance with the provisions of the Bill, into—

- (a) Two or more units, each unit being part of the land consisting of a space of any shape situated below, on, or above the surface of the land, or partly in one such situation and partly in another or others, all the dimensions of which are limited, and which is designed for separate ownership; and
- (b) Common property, being so much of the land as is not comprised in any unit.

*Clause 4* states that the subdivision of land so as to provide for units shall be effected by the deposit under the Land Transfer Act 1952 of a plan specifying the units in their relation to a building or buildings erected on the land. The plan must comply with the requirements set out in the First Schedule to the Bill. The deposit of a unit plan has the effect of creating in each unit a stratum estate in freehold or a stratum estate in leasehold, as the case may be, which shall comprise—

- (a) The fee simple estate or, as the case may be, the estate as lessee or licensee in the unit determinable in accordance with any of the provisions of *clauses 46, 48, and 49* of this Bill;
- (b) The undivided share in the fee simple estate or, as the case may be, the estate as lessee or licensee in the common property to which the proprietor of the unit is entitled by virtue of *clause 10* of this Bill; and
- (c) The undivided share in the fee simple estate or, as the case may be, the estate as lessee or licensee in all the units to which the proprietor of the unit is contingently entitled by virtue of the provisions of *clauses 46 and 48* of this Bill.

*Clause 5* specifies prerequisites which must be satisfied before a unit plan may be deposited.

*Clause 6* provides that, for the purpose of determining each proprietor's rights and obligations, before the unit plan is deposited there shall be assigned to every principal unit and every accessory unit a unit entitlement, to be fixed by the Valuer-General on the basis of the relative value of the unit to each of the other units on the unit plan. Except as provided in *clause 20 (5)*, no change may be made in the unit entitlement of any unit after the unit plan is deposited.

*Clause 7* imposes restrictions on sales of units before the unit plan is deposited, and makes certain provisions for the protection of purchasers where such sales do take place.

*Clause 8* preserves existing easements and provides for them to be recorded on the unit plan.

*Clause 9* provides for the initial issue of certificates of title in respect of the units.

*Clause 10* provides that the common property is to be held by the proprietors in shares proportioned to the unit entitlement of their respective units. The registered proprietors of all the units may combine to deal with the common property or any part of it.

*Clause 11* provides that an accessory unit may not be sold or otherwise disposed of independently of a principal unit. A sale of an accessory unit to the proprietor of another principal unit is permitted.

*Clause 12* provides in general terms for mutual incidental rights analogous to easements, as between the common property and the individual units, in relation to support, shelter, and protection; the passage or provision of water, sewerage, drainage, gas, electricity, oil, garbage, air, and all other services whatsoever (including telephone, radio, and television); and access, light, and the maintenance of existing overhanging eaves.

*Clause 13* provides for the constitution as a body corporate of the proprietor or proprietors for the time being of all the units comprised in a unit plan.

*Clause 14* makes provisions for the bringing of actions by and against any such body corporate.

*Clause 15* makes special provision for problems incidental to the Occupiers Liability Act 1962 and actions in tort involving the occupier of premises.

*Clause 16* specifies the duties of the body corporate regarding insurance, repairs, and general administration in relation to the land, buildings, and improvements with which it is concerned. The clause also provides that the body corporate shall establish and maintain a fund for administrative expenses sufficient for the management of the common property, the payment of insurance premiums, and the discharge of other obligations of the body corporate. The body corporate is empowered to raise such amounts as it determines for these purposes by levying contributions on the proprietors in proportion to the unit entitlement of their respective units.

*Clause 17* provides that, subject to the provisions of the Bill, the body corporate shall have all such powers as are reasonably necessary to enable it to carry out the duties imposed on it by this Bill and by its rules.

*Clause 18* provides that any instrument evidencing any transfer, lease, grant of easement, or other dealing affecting the common property, or any land that is to become part of the common property, may be executed by the body corporate, if the transfer, lease, grant, or dealing has been approved by unanimous resolution of the body corporate.

*Clause 19* prescribes special requirements in connection with the registration of instruments affecting the whole or any part of any common property. Special provisions are made for the protection of mortgagees, annuitants, lessees, and sublessees whose interests are charged on or relate to the units.

*Clause 20* makes provision for the addition to the common property of further land or of a unit shown on the unit plan.

*Clause 21* provides that the Registrar may require the proprietors to deposit a new unit plan in any case where, because of the nature or number of alterations necessary or for any other reason, it would be impracticable to alter the unit plan.

## PART II

### SPECIAL PROVISIONS RELATING TO LEASEHOLD LAND

*Clause 22* declares that, where a unit plan relates to an estate as lessee or licensee of any land, the provisions of Parts I, III, and IV of the Bill shall be read subject to Part II. In Part II the term "lease" is to be read as including a licence, and the terms "lessor" and "lessee" are to have corresponding meanings.

*Clause 23* declares that the deposit of a unit plan does not cause a severance of the lessor's reversionary estate in the land, and that, subject to Part II of the Bill, the lessor may deal with his reversionary estate as if the unit plan had not been deposited.

*Clause 24* gives the body corporate power to sue and be sued as if it were the lessee under the lease.

*Clause 25* provides that a stratum estate in leasehold shall enure until the unit plan has been cancelled, and that the lessor's consent shall not be required to any dealing with a stratum estate in leasehold except a redevelopment.

*Clause 26* forbids the surrender to the lessor of the stratum estate in leasehold in any unit, and the release by the lessor of any unit or any part of the common property.

*Clause 27* declares that each unit proprietor shall be deemed to have guaranteed to the lessor the payment of a due proportion of rent, etc.

*Clause 28* excludes the exercise by the lessor of powers of forfeiture, re-entry, or distress, and confers on the lessor power to proceed directly against a unit proprietor in respect of that proprietor's liability under the guarantee implied by *clause 27*.

*Clause 29* authorises the lessor to apply to the Court for the appointment of an administrator or for cancellation of the unit plan.

*Clause 30* declares that the term of the lease or of any renewal or extension thereof shall be deemed not to have expired until the unit plan has been cancelled or a certificate of expiry has been registered as specified.

*Clause 31* specifies the extent to which the consent of the unit proprietors is necessary in connection with the renewal of the lease or the purchase of the reversionary estate in the land. The clause also defines the rights of the unit proprietors in respect of any interest in the value of the buildings, etc., to which the lessee is entitled on the expiry of the lease.

*Clause 32* prescribes rules in respect of merger in cases where the lessor acquires the strata estates in leasehold in all the units or where the proprietors of all the units acquire the reversionary estate in the land.

### PART III

#### MISCELLANEOUS PROVISIONS

*Clause 33* provides that any contribution levied by the body corporate in respect of a unit shall be due and payable as determined by the body corporate; and any amount so payable may be recovered as a debt from the person who was the proprietor of the unit at the time when the amount became payable or (subject to *clause 37*) from the proprietor of the unit at the time when the proceedings are instituted.

*Clause 34* provides that where, in accordance with its powers, the body corporate does any repair or other work which is substantially for the benefit of one or some of the units only, the expense shall be recoverable as a debt from the proprietor or proprietors of the unit or units concerned. Where more units than one are concerned, the expense is to be apportioned rateably accordingly to the relative unit entitlements. Where a unit has changed hands, the proprietor at the time when the expense was incurred and (subject to *clause 37*) the proprietor at the time when the action is instituted are to be jointly and severally liable for so much of the expense as is apportioned to that unit.

*Clause 35* provides that where, in accordance with its powers, the body corporate does any repair or other work and the repair or work was rendered necessary by reason of any wilful or negligent act or omission on the part of, or any breach of any rule by, any proprietor or his tenant, lessee, licensee, or invitee, the expense incurred by it in doing the repair or work shall be recoverable by it as a debt from that proprietor.

*Clause 36* provides that, subject to the Bill, a proprietor shall not be liable to pay or to contribute to the funds of the body corporate any amount exceeding the due proportion recoverable from him under *clauses 16 (2) and 33* of any amount required to discharge any liability accrued or prospective of the body corporate.

*Clause 37* provides that the body corporate shall, on the application of a proprietor, any person authorised in writing by him, or a purchaser or mortgagee of a unit, certify as to the proprietor's liability under the heads specified in the clause. In favour of any person dealing with the proprietor to whom the certificate relates, the certificate shall be conclusive evidence of the matters certified therein.

*Clause 38* prescribes model rules for regulating the control, management, administration, use, and enjoyment of the units and common property on a unit plan, and the activities of the body corporate that comprises the proprietor or proprietors of those units. Provision is made for the amendment or repeal of the rules in relation to any body corporate.

*Clauses 39 and 40* declare that the proprietor of a unit may effect a policy of insurance in respect of damage to his unit, whether for the purpose of indemnifying himself against liability under any mortgage affecting the unit or for his general protection.

*Clause 41* provides that the body corporate, a creditor of the body corporate, or any person having a registered interest in a unit, may apply to the Court for the appointment of an administrator, who shall (to the exclusion of the body corporate and the committee) have and exercise the powers of the body corporate and the committee, and be subject to the duties of the body corporate and the committee, or such of those powers and duties as the Court orders. The administrator may not do anything that requires a unanimous resolution.

*Clause 42* makes provision for the exercise of voting rights where the person who would otherwise have the vote is under 18 years of age or is a protected patient or a protected person or otherwise incapacitated, or where (by reason of death or because a person is out of New Zealand or cannot be found) it is impracticable to obtain the exercise by a person of his power of voting. The clause also defines the circumstances in which the mortgagee may exercise the voting rights in relation to a mortgaged unit.

*Clause 43* provides that in any case where, in accordance with the Bill or rules under the Bill, a unanimous resolution, or the consent, of all the proprietors is necessary before any act may be done and that resolution or consent is not obtained, but the resolution or act is supported by 80 percent or more of those entitled to vote, any person included in the majority

in favour of the resolution or act may apply to the Court to have the resolution as supported or the consents as obtained declared sufficient to authorise the particular act proposed; and, if the Court so orders, the resolution shall be deemed to have been passed unanimously or the consent of all the proprietors obtained, as the case may be.

*Clause 44* makes provision for the Court to grant relief to minorities who vote against a resolution of the proprietors of the units or do not consent to an act of the proprietors or the body corporate.

*Clause 45* makes provision for the redevelopment of all or any part of the units and common property in accordance with a plan of redevelopment.

*Clause 46* makes provision for the cancellation of a unit plan upon the application of the proprietors of all the units shown on the plan. Before the plan is cancelled all caveats, mortgages, charges, and leases must be cleared off. Provision is made for the vesting of the land in the unit proprietors upon the cancellation of the plan.

*Clause 47* provides that the Court may order the cancellation of a unit plan on application made to it by the body corporate, an administrator, a proprietor, or a registered mortgagee of a unit.

*Clause 48* provides machinery for the cancellation of a unit plan following a decision of the Court.

*Clause 49* empowers the Court to settle a scheme following the destruction of a building to which a unit plan relates or damage to such a building.

*Clause 50* provides that where an application under *clause 47* or *clause 49* 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 2 applications together.

*Clause 51* provides machinery for the service of documents on the body corporate.

*Clause 52* contains provisions for compelling compliance by the body corporate, the secretary, and members of the committee with requirements and duties imposed by the Bill.

*Clause 53* provides that, where any local authority, public body, or person authorised by it has a right under any Act to enter upon any part of the land to which a unit plan relates, the authority, body, or person shall be 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 powers under the Act.

*Clause 54* authorises the making of regulations prescribing fees and forms, and for such matters as are contemplated by or necessary for giving full effect to the provisions of the Bill and for the due administration thereof.

## PART IV

## CONVERSION OF EXISTING SCHEMES

*Clause 55* applies, with the additions and modifications set out in this Part of the Bill, the foregoing provisions of this Bill (except *clause 7*) in cases where—

- (a) The registered proprietor of any estate in land in respect of which an application to deposit a unit plan is contemplated is a flat or office owning company within the meaning of the Companies Amendment Act 1964; or
- (b) Each of the persons who are registered as proprietors of any such estate as tenants in common is also the proprietor of a leasehold interest in part of the land pursuant to a lease made between all the registered proprietors at the date of the lease as lessors and himself (or a person through whom he claims) as lessee.

In this Part of the Bill the term “company” is defined as meaning a company to which *paragraph (a)* applies, and the term “owners” is defined as meaning a group of owners to whom *paragraph (b)* applies.

*Clause 56* provides that, before an application is made in accordance with this Part of the Bill to deposit a unit plan,—

- (a) There shall be either a unanimous resolution of the members of the company or of the owners to subdivide its or their land in accordance with the Bill, or an order of the Court made under *clause 57*; and
- (b) Notice of the intention so to subdivide the land shall have been given in accordance with *clause 59*.

*Clause 57* provides that, where at any meeting held for the purpose a unanimous resolution of the members of the company or of the owners is not obtained for the purposes of *clause 56*, any member of the company or owner may apply to the Court for an order that all necessary steps be taken in accordance with this Part of the Bill by the company or the owners to subdivide in accordance with the Bill and in the manner specified in the application to the Court the land specified in that application.

*Clause 58* provides that a unanimous resolution by the members of an existing company or the owners to subdivide its or their land in accordance with the Bill, or an order of the Court made pursuant to *clause 57* that the land be so subdivided, shall be sufficient authority for the company or the owners to do whatever may be required to accomplish that purpose without any further resolution of the company or the owners.

*Clause 59* provides for notice of any such resolution or order to be given to other interested persons and to the Registrar, and for the Registrar to be given the particulars and things specified in *subclause (2)*. The Registrar is required to make an appropriate entry on the register.

*Clause 60* makes provision for the service of notices on the persons having interests in the land to whom notices must be given under *clause 59 (1)*.

*Clause 61* specifies in detail the circumstances in which consents are required for the purposes of this Part of the Bill to the deposit of a new unit plan, and where they may be dispensed with.

*Clause 62* provides that no unit plan may be deposited while the land to which it relates is subject to any mortgage or charge.

*Clause 63* makes provision, on the deposit of a unit plan, for appropriate vestings of the units, common property, liabilities, etc., and for the dissolution of the company and the surrender to the Registrar of existing share certificates and certain other documents.

*Clause 64* provides that, on the deposit of a unit plan, outstanding instruments of title shall be surrendered to the Registrar, and the Registrar shall cancel the certificate of title to the land and issue certificates of title for the strata estates.

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