

Reprint
as at 1 October 2012

Unit Titles Act 1972

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Unit Titles Act 1972: repealed, on 1 October 2012, by section 218 of the Unit Titles Act 2010 (2010 No 22).

Unit Titles Act 1972: repealed (with section 37 and schedules 2 and 3 continued in force until 1 October 2012), on 20 June 2011, by section 218 of the Unit Titles Act 2010 (2010 No 22).

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Justice.

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An Act to facilitate the subdivision of land into units that are to be owned by individual proprietors, and common property that is to be owned by all the unit proprietors as tenants in common, and to provide for the use and management of the units and common property

Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Unit Titles Act 1972.
- (2) This Act shall come into force on 1 April 1973.

2 Interpretation

In this Act, unless the context otherwise requires,—

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

body corporate, in relation to the units and common property shown on a unit plan and to the proprietor or proprietors of those units, means the body corporate that comprises the said proprietor or proprietors in accordance with section 12

committee, in relation to any body corporate, means—

- (a) its committee constituted under its rules; or
- (b) in the case of a body corporate which does not have a committee, the proprietor or proprietors who comprise the body corporate

common property means common property within the meaning of paragraph (b) of subsection (1) of section 3

Court means the High Court

Court: the words “High Court” were substituted for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124), as from 1 April 1980.

land means land within the meaning of the Land Transfer Act 1952

principal unit means a unit that is designed for use (whether in conjunction with any accessory unit or not) as a place of residence or business or otherwise, and that is shown on a unit plan as a principal unit

Principal unit: this definition was amended, as from 2 November 1979, by section 10(1) Unit Titles Amendment Act 1979 (1979 No 37) by inserting the words “or otherwise”.

proprietor, in relation to any unit, means the person or persons for the time being registered as proprietor of the stratum estate in the unit:

provided that in sections 26, 32, 33, and 34, and subsections (11) and (12) of section 37, in any case where a person is in actual occupation of a unit under a binding agreement for sale and purchase, unless the context otherwise requires, the term **proprietor** means that person

redevelopment means—

- (a) the subdivision by sale, transfer, or partition into 2 or more new units (whether or not any new unit is on the same level as any other new unit) of—
 - (i) a unit or units shown on a deposited unit plan; or
 - (ii) a unit or units shown on a deposited unit plan and the whole or part of any stratum or strata formerly forming part of the common property shown on the deposited unit plan; or
- (b) the enlargement of a unit shown on a deposited unit plan by the inclusion therein of any stratum which immediately touches upon that unit and was formerly part of the common property or part of another unit shown on the plan; or
- (c) the erection of 1 or more new units on the common property

Registrar, in relation to any land, means the District Land Registrar appointed for the purposes of the Land Transfer Act

1952 for the land registration district in which the land is situated

rules, in relation to any body corporate, means the rules applicable to that body corporate prescribed by or under section 37

stratum estate means a stratum estate within the meaning of subsection (2) of section 4

supplementary record sheet, in relation to any unit plan and body corporate, means the supplementary record sheet set up and filed by the Registrar under section 20 in relation to that unit plan and body corporate

to register means to register under the Land Transfer Act 1952

unanimous resolution, in relation to a body corporate, means—

- (a) a resolution which is passed unanimously at a general meeting of the body corporate at which every proprietor is present and votes either in person or by proxy; or
- (b) a resolution which is passed unanimously at a general meeting of the body corporate by every proprietor who is present and votes either in person or by proxy, and agreed to within 28 days after the date of the meeting by every other proprietor who was entitled to be present and vote at the meeting, or by his successor in title if he has ceased to be a proprietor after the meeting; or
- (c) while there is only 1 proprietor, a decision of that proprietor

unit, in relation to any land, means a part of the land consisting of a space of any shape situated below, on, or above the surface of the land, or partly in one such situation and partly in another or others, all the dimensions of which are limited, and that is designed for separate ownership

Unit: this definition was substituted, as from 2 November 1979, by section 10(2) Unit Titles Amendment Act 1979 (1979 No 37).

unit entitlement, in relation to any unit, means the unit entitlement assigned to that unit under section 6(1) or section 44

unit plan means a plan that has been or is intended to be deposited under section 4.

2A Relationship to Resource Management Act 1991

- (1) Except as provided in subsections (2) and (3), nothing in this Act shall derogate from the provisions of the Resource Management Act 1991.
- (2) Nothing in section 11 or Part 10 of the Resource Management Act 1991 shall apply to sections 45, 46, 47, 48, 49, or Part 4.
- (3) Nothing in section 11 or Part 10 of the Resource Management Act 1991 shall apply to a deposit of a stage unit plan or a complete unit plan in accordance with the Unit Titles Amendment Act 1979.

Section 2A was inserted, as from 1 October 1991, by section 362 Resource Management Act 1991 (1991 No 69).

Part 1
Stratum estates

3 Subdivision of land into units

- (1) 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 this Act, into—
 - (a) 2 or more principal units; and
 - (aa) such number of accessory units (if any) as the registered proprietor may wish; and
 - (b) common property, being so much of the land as is not comprised in any unit.
- (2) *[Repealed]*
- (3) Nothing in this Act shall restrict the Land Act 1948 or the Maori Affairs Act 1953.

Compare: Conveyancing (Strata Titles) Act 1961, ss 2, 3 (NSW); Strata Titles Act 1967, s 3 (Victoria)

Subsection 2 was repealed, as from 1 April 1979, by section 4(1) Local Government Amendment Act 1978 (1978 No 43).

Subsection (1)(a) was substituted, and subsection (1)(aa) was inserted, as from 2 November 1979, by section 11 Unit Titles Amendment Act 1979 (1979 No 37).

4 Subdivision effected when plan deposited

- (1) The subdivision of land so as to provide for units shall be effected by the deposit under the Land Transfer Act 1952 of a plan specifying the units in their relation to a building or buildings already erected on the land. The plan (in this Act referred to as a **unit plan**) shall comply with the provisions of all regulations as to survey made under the Survey Act 1986.
- (2) The deposit of a unit plan shall have 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 sections 45, 47, and 48; and
 - (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 section 9; 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 sections 45 and 47.
- (3) Upon the creation of a stratum estate in a unit, that estate may devolve or be transferred, leased, mortgaged, or settled, and any transfer, lease, mortgage, or settlement shall have the same effect, as if the stratum estate were an estate in fee simple in land or an interest in land under a lease or licence, as the case may be; but the fee simple estate or, as the case may be, the interest as lessee or licensee in the land or any part of the land shall not be capable of devolving or being dealt with in any way, and none of the component parts of a stratum estate shall, except as provided in section 9, be capable of devolving or being dealt with independently of the others.
- (3A) Notwithstanding anything in subsection (3), any proprietor of a unit may grant an easement over the unit, but only with the consent of every proprietor and every mortgagee of all the other units comprising the development.

- (4) Notwithstanding section 95 of the Land Transfer Act 1952, no separate certificate of title shall issue under that Act for any such fee simple estate or interest in land under a lease or licence or component part, but nothing in this subsection shall restrict section 8.
- (5) When a unit is being transferred, leased, mortgaged, settled, or otherwise dealt with pursuant to subsection (3A), it shall be described in the instrument evidencing the transaction as “Unit No on Unit Plan No and being that unit described in Certificate of Title Volume folio..... , Registry”.
- (6) Except as otherwise provided in this Act and subject to any necessary modifications, the provisions of the Land Transfer Act 1952 shall apply to every stratum estate in freehold and stratum estate in leasehold and to every dealing with and instrument affecting any such estate.

Subsection (1) was amended, as from 1 April 1987, by section 81(1) Survey Act 1986 (1986 No 123) by substituting the words “Survey Act 1986” for the words “Surveyors Act 1966”.

Subsection (3) was amended, as from 2 November 1979, by section 12(1)(a) and (b) Unit Titles Amendment Act 1979 (1979 No 37) by substituting the words “or settled” for the words “settled or otherwise dealt with”, and substituting the words “or settlement” for the words “settlement, or other dealing”.

Subsection (3A) was inserted, as from 2 November 1979, by section 12(2) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (5) was amended, as from 2 November 1979, by section 12(1)(c) Unit Titles Amendment Act 1979 (1979 No 37) by substituting the words “settled, or otherwise dealt with pursuant to subsection (3A) of this section” for the words “or otherwise dealt with”.

5 Restrictions on deposit of plan

- (1) A unit plan may not be deposited—
 - (a) while the certificate of title to any land to which it relates is limited in any manner referred to in Part 12 of the Land Transfer Act 1952:
 - (b) while the land to which it relates is held in more than 1 certificate of title issued under the Land Transfer Act 1952:
 - (c) unless the land to which it relates is the whole of the land in a certificate of title issued under the Land Transfer Act 1952:

- (d) until it has been approved by the Chief Surveyor appointed for the land district constituted under the Land Act 1948 in which the relevant land is situated:
- (e) *[Repealed]*
- (f) unless the grantor of the lease or licence if the land is held under a lease or licence, the registered proprietor of any mortgage or charge affecting the land or any part of it, and every caveator whose caveat against the land was lodged with the Registrar before deposit of the plan, have consented in writing to its being deposited:
provided that any such consent may be given by an agent duly authorised in writing:
- (g) unless a certificate in the form set out in Schedule 4 has been given in writing by the chief executive of the territorial authority in whose district the land is situated to the effect that every building shown on the plan has been erected, and all other development work has been carried out, to the extent necessary to enable all the boundaries of every unit and the common property shown on the plan to be physically measured:

provided that paragraphs (a), (b), and (c) shall not prevent the deposit of a plan in any case where 1 certificate of title, not limited in any manner referred to in Part 12 of the Land Transfer Act 1952, can properly be issued for the land to which the plan relates.

- (2) The approval of a Chief Surveyor aforesaid endorsed on a unit plan shall have effect to—
 - (a) approve for the purposes of the Survey Regulations 1972 any survey definition incorporated in the plan:
 - (b) approve for the purposes of this Act and the Land Transfer Act 1952 the definition of all the units and common property shown on the plan:
 - (c) render the plan the property of the Crown.

(2A) *[Repealed]*

(2B) *[Repealed]*

(2C) *[Repealed]*

(3) Application to deposit a unit plan shall be made to the Registrar in form 1 in Schedule 1 by the registered proprietor of the land to which the plan relates.

Subsection (1)(e) repealed, as from 1 July 1988, by section 2(2)(e) Wages Protection and Contractors Liens Act Repeal Act 1987 (1987 No 188).

Subsection (1)(g) was substituted by section 2(1) Unit Titles Amendment Act 1973 (1973 No 101).

Subsection (1)(g) was substituted, as from 2 November 1979, by section 13(1) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (1)(g) was amended, as from 20 January 1981, by section 2(2) Local Government Amendment Act 1980 (1980 No 82) by substituting the words “principal administrative officer” for the words “principal officer”.

Subsection (1)(g) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words “chief executive” for the words “principal administrative officer”. See sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (2)(b) was amended, as from 2 November 1979, by section 13(2) Unit Titles Amendment Act 1979 (1979 No 37) by substituting the words “all the units and common property” for the words “any flat or office”.

Subsection (2A) was inserted by section 2(2) Unit Titles Amendment Act 1973 (1973 No 101) and repealed, as from 2 November 1979, by section 14(2)(a) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (2B) was inserted by section 2(2) Unit Titles Amendment Act 1973 (1973 No 101) and repealed, as from 2 November 1979, by section 14(2)(a) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (2C) was inserted by section 2(2) Unit Titles Amendment Act 1973 (1973 No 101) and repealed, as from 2 November 1979, by section 14(2)(a) Unit Titles Amendment Act 1979 (1979 No 37).

5A Further provisions relating to principal administrative officer’s certificate

(1) The chief executive of the territorial authority shall not refuse to give a certificate in respect of any unit plan under section 5(1)(g) except on 1 or more of the following grounds:

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

- (b) *[Repealed]*
- (c) that any building on the land has been erected in such a place in relation to any boundary, or to such a height, as to contravene the territorial authority's bylaws or any of the requirements of the Resource Management Act 1991:
- (d) that any building or any other part of the whole development contravenes any such bylaws or requirements in any other manner to such an extent that alterations are required that may affect the location or the boundaries of any unit or of any part of the common property shown on the plan.
- (2) When the chief executive of the territorial authority has given a certificate in respect of any unit plan under section 5(1)(g), and that plan has been deposited under this Act, the territorial authority, notwithstanding any enactment or rule of law to the contrary, shall have no power to require any alteration to any building or any other part of the whole development that may affect the location or the boundaries of any unit or of any part of the common property shown on the plan, but may otherwise pursue any remedies it may have (including the prosecution of any person) in respect of any non-compliance with its bylaws or the requirements of the Resource Management Act 1991.
- (3) The territorial authority, the chief executive of the territorial authority, every member of the territorial authority, and every employee or agent of the territorial authority, shall not be under any civil or criminal liability in respect of the giving of a certificate under section 5(1)(g), unless it or he has acted in bad faith.

Section 5A was inserted, as from 2 November 1979, by section 14(1) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (1)(b) was repealed, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Subsections (1)(c) and (2) were amended, as from 1 October 1991, by section 362 Resource Management Act 1991 (1991 No 69) by substituting the words "Resource Management Act 1991" for the words "Town and Country Planning Act 1977".

Section 5A was amended, as from 20 January 1981, by section 2(2) Local Government Amendment Act 1980 (1980 No 82) by substituting the words "principal administrative officer" for the words "principal officer".

Section 5A was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words “chief executive” for the words “principal administrative officer” wherever they occur. *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

6 Unit entitlement

- (1) For the purpose of determining the matters specified in subsection (3), 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 a registered valuer within the meaning of the Valuers Act 1948 (subject to payment to the valuer of such fee as he may fix) on the basis of the relative value of the unit in relation to each of the other units on the unit plan.
- (2) Subject to paragraph (d) of section 19(5) and section 44(3), no change shall be made in the unit entitlement of any unit after the unit plan is deposited.
- (3) The matters referred to in subsection (1) are—
 - (a) the proprietor’s share in the common property in accordance with section 9;
 - (b) the extent of the proprietor’s liability for damages and costs under section 14;
 - (c) the extent of the proprietor’s obligation under section 15 in respect of contributions levied by the body corporate, and of his rights under that section on a distribution of any surplus money or personal property;
 - (d) the extent of the proprietor’s obligation for payment of rent and other money under section 26;
 - (e) the extent of the proprietor’s share of the value of any buildings, fixtures, and other improvements under section 30;
 - (f) the proprietor’s voting rights on a poll pursuant to clause 27 of Schedule 2;
 - (g) subject to section 48(5), the proportion in which money (if any) received or held by the body corporate for distribution among the proprietors is to be distributed among them in accordance with section 45(7); and
 - (h) the share in the land which is to vest in the proprietor under subsection (5) of section 45 upon the cancellation of the unit plan.

Compare: Victoria Act, s 10; NSW Act, s 18

Subsection (1) was amended, as from 1 July 1998, by section 54(1) Ratings Valuations Act 1998 (1998 No 69) by omitting the words “the Valuer-General or” and the words “,as the case may be,”. See sections 55 to 63 for the savings and transitional provisions.

7 Existing easements affecting land

- (1) The deposit of a unit plan shall have no effect on any easement or restriction as to user to which the land to which the plan relates is subject or on any easement or restriction as to user which is appurtenant to the land to which the plan relates.
- (2) Notwithstanding section 67 of the Land Transfer Act 1952, the Registrar shall require all such easements and restrictions as to user to be recorded (by diagram, words, or otherwise) on the unit plan, and shall not note them on any certificate of title issued under section 8.

8 Issue of certificate of title in respect of unit

- (1) On the deposit of a unit plan, the Registrar shall—
 - (a) issue a certificate of title, in form 2 in Schedule 1, in the name of the registered proprietor (and not the body corporate) of the land to which the plan relates, for the stratum estate in all of the units shown on the unit plan; and
 - (b) *[Repealed]*
 - (c) cancel the existing certificate of title (if any) to the land; and for this purpose the outstanding copy of that certificate of title shall be surrendered to the Registrar on the occasion of the deposit of the unit plan; and
 - (d) in a case where the unit plan relates to an estate as lessee or licensee under a registered lease or licence of any land and no separate certificate of title has issued in respect of the estate, note an appropriate memorial on this lease or licence.
- (2) Notwithstanding paragraph (a) of subsection (1), the Registrar may, at the request of the registered proprietor, issue a separate certificate of title for any principal unit, which certificate of title may include also 1 or more accessory units.
- (3) Every certificate of title issued under this section shall be deemed to be a certificate of title issued under the Land

Transfer Act 1952, and, on issuing any such a certificate under this section, the Registrar shall comply with the requirements of section 67 of that Act accordingly.

- (4) It shall not be necessary in any such certificate of title to mention the quantum of the undivided share in the common property to which the proprietor is entitled by virtue of section 9.

Compare: Victoria Act, s 11(2)

Subsection (1)(a) was amended, as from 2 November 1979, by section 15(1) Unit Titles Amendment Act 1979 (1979 No 37) by inserting the words “(and not the body corporate)”.

Subsection (1)(b) was repealed, as from 2 November 1979, by section 15(2) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (3) was amended, as from 2 November 1979, by section 15(3) Unit Titles Amendment Act 1979 (1979 No 37) by inserting the words “, and, on issuing any such a certificate under this section, the Registrar shall comply with the requirements of section 67 of that Act accordingly”.

9 Common property

- (1) The common property shall be held by the proprietors of all the units as tenants in common in shares proportional to the unit entitlement in respect of their respective units:
provided that nothing in this subsection shall affect the interests among themselves of the proprietors of a stratum estate in an individual unit.
- (2) While the same person is proprietor of all the units, subsection (1) shall apply as if there were different proprietors for each of the units.
- (3) The proprietors of all the units may sell or lease part of the common property or may grant an easement over the whole or any part of it.

Compare: Victoria Act, s 13; NSW Act, s 9

10 Independent dealings with accessory units restricted

- (1) Except where it is transferred to the proprietor of a principal unit shown on the same unit plan, no accessory unit or any interest in it may be sold, leased, mortgaged, or otherwise disposed of or dealt with except as part of a sale, lease, mortgage,

disposition, or other dealing which includes a principal unit or a corresponding interest in a principal unit:

provided that the proprietor of a principal unit included in the same certificate of title as an accessory unit may let the accessory unit on a weekly tenancy or on a tenancy determinable at the will of either of the parties by 1 month's notice in writing.

- (2) No certificate of title relating to an accessory unit shall be issued except as part of a certificate of title relating to a principal unit.
- (3) No principal unit which is for the time being included in the same certificate of title as an accessory unit (not being a certificate of title issued under paragraph (a) of section 8(1)), and no interest in any such principal unit may be sold, leased, mortgaged, or otherwise disposed of or dealt with except as part of a sale, lease, mortgage, disposition, or dealing which includes the accessory unit or a corresponding interest in the accessory unit, as the case may be, or where there is a concurrent sale of the accessory unit in accordance with subsection (1).
- (4) Where any accessory unit is being transferred independently of a principal unit to a person who is the proprietor of a principal unit shown on the same unit plan, the instrument of transfer in respect of the accessory unit shall contain a request to the Registrar for the accessory unit to be included in the certificate of title for the principal unit; and upon registration of the instrument of transfer the accessory unit shall become subject to all mortgages and charges then affecting the principal unit.
- (5) Where an accessory unit is for the time being included in the same certificate of title as a principal unit the accessory unit may not be transferred apart from the principal unit while it remains subject to any mortgage or charge.
- (6) Notwithstanding anything to the contrary in the Land Transfer Act 1952, any purported sale, lease, mortgage, disposition, or dealing with any unit in contravention of subsection (1) or subsection (3) shall be void and of no effect:
provided that nothing in this subsection shall affect the devolution of any unit upon the death of the proprietor thereof to the administrator of that proprietor.

Compare: Victoria Act, s 8

11 Incidental rights

- (1) The common property and each unit on a unit plan shall, by virtue of this section, have as appurtenant thereto all such rights of support, shelter, and protection, and for the passage or provision of water, sewerage, drainage, gas, electricity, oil, garbage, air, and all other services of whatsoever nature (including telephone, radio, and television services) over the land and every part thereof as may from time to time be necessary for the reasonable use or enjoyment of the common property or unit.
- (2) The common property and each unit on a unit plan shall, by virtue of this section, have as appurtenant thereto—
 - (a) a right to the full, free, and uninterrupted access and use of light to or for any windows, doors, or other apertures existing at the date of deposit of the plan and enjoyed at that date; and
 - (b) a right to maintain overhanging eaves existing at the date of deposit of the plan—
over the land and every part thereof.
- (3) The rights created by this section shall carry with them all ancillary rights necessary to make them effective as if they were easements.
- (4) Nothing in this section shall affect any land other than the land to which the unit plan relates.

Compare: Victoria Act, s 12; NSW Act, ss 5, 6, 7

12 Proprietors to constitute body corporate

- (1) On the deposit of a unit plan the registered proprietor of the land to which the plan relates shall become a body corporate.
- (2) Thereafter the proprietor or proprietors for the time being of all the units comprised in the unit plan shall, by virtue of this Act, be the body corporate.
- (3) The body corporate shall have the designation “Body Corporate Number ” [*the registered number and Registry of the unit plan*].
- (4) The body corporate shall have perpetual succession and a common seal.

Compare: Victoria Act, s 14

13 Actions by and against body corporate

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

Compare: Victoria Act, s 14(3), (4)

14 Liability in tort

- (1) Where any proceedings are brought in any Court under the provisions of the Occupiers' Liability Act 1962 or in tort or in respect of an alleged breach of any statutory duty and it is required by law that the proceedings be brought against the owner or occupier of any particular parcel of land or premises, the provisions of this section shall apply notwithstanding any Act or rule of law to the contrary.
- (2) For the purposes of any proceedings to which this section applies:
 - (a) the common property and each of the units shall be separate premises; and
 - (b) where the proceedings are brought in respect of the common property, the body corporate shall be deemed to be the owner and the occupier of the common property, and any judgment which may be awarded to the plaintiff shall be entered against the body corporate accordingly:

provided that, where the cause of action arose through the negligence or unauthorised act or omission of 1 or more of the proprietors or former proprietors, the body corporate may join that proprietor or those proprietors as co-defendants, and judgment may be given against the body corporate and such proprietor or proprietors jointly and severally.
- (3) The amount of any judgment (including costs) given jointly and severally as provided in subsection (2) may be recovered as a debt by the body corporate from the proprietor or pro-

prietors against whom judgment is given, in an action in any Court of competent jurisdiction.

- (4) Where the defendant in any proceedings to which this section applies is the body corporate, the proprietors of the units at the time when judgment is entered shall be deemed to have guaranteed to the plaintiff the payment by the body corporate of the full amount awarded by way of judgment:
provided that the liability of each such proprietor shall be limited to an amount equal to such part of the total sum payable by the body corporate in accordance with the judgment, less the amount which the body corporate can recover under any policy of insurance, and less any amount paid by a proprietor against whom judgment is given pursuant to subsection (2) or recovered from him pursuant to subsection (3), as is proportionate to the unit entitlement of his unit:
provided also that any amount recovered from a proprietor, pursuant to subsection (3), after satisfaction of the judgment by the body corporate, shall (subject to any right of set-off) be refunded to those proprietors who have made a payment under this subsection, in proportion to the amount of their payments.
- (5) Where any proprietor pays to the plaintiff any sum which he is liable to pay under the provisions of subsection (4), he shall be entitled to recover the same as a debt in an action in any Court of competent jurisdiction from the body corporate:
provided that nothing in this subsection shall prevent the body corporate in such an action from claiming any sum due to it from that proprietor under the provisions of this Act by way of set-off.
- (6) If the body corporate at a general meeting so resolves, any sum payable by it in accordance with the provisions of this section may be paid out of any general fund established by it.

15 Duties of body corporate

- (1) The body corporate shall—
- (a) subject to the provisions of this Act, carry out any duties imposed on it by the rules:
 - (b) insure and keep insured all buildings and other improvements on the land to the replacement value thereof (including demolition costs and architect's fees) against

- fire, flood, explosion, wind, storm, hail, snow, aircraft and other aerial devices dropped therefrom, impact, riot and civil commotion, malicious damage caused by burglars, and earthquake in excess of indemnity value:
- (c) effect such other insurance as it is required by law to effect or as it may consider expedient:
 - (d) subject to sections 45, 46, 47, and 48, forthwith apply insurance money received by it in respect of damage to any building or improvements in rebuilding and reinstating the said building or improvements so far as the rebuilding or reinstatement may lawfully be effected:
 - (e) pay the premiums in respect of any policies of insurance effected by it:
 - (f) keep the common property in a state of good repair:
 - (g) comply with any notice or order duly served on it by any competent local authority or public body requiring repairs to, or work to be performed in respect of, the land or any building or improvements thereon:
 - (h) subject to this Act, control, manage, and administer the common property and do all things reasonably necessary for the enforcement of the rules:
 - (i) do all things reasonably necessary for the enforcement of any lease or licence under which the land is held:
 - (j) do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section.
- (2) The body corporate shall also—
- (a) establish and maintain a fund for administrative expenses sufficient in the opinion of the body corporate for the control, management, and administration of the common property, and for the payment of any insurance premiums, rent, and repairs and the discharge of any other obligations of the body corporate:
 - (b) determine from time to time the amounts to be raised for the purposes aforesaid:
 - (c) raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective units.

- (3) The body corporate may, pursuant to a resolution of the proprietors, distribute any money or personal property in its possession and surplus to its current requirements among the proprietors for the time being according to their unit entitlements.
- (4) For the purposes of effecting any policy of insurance under the provisions of subsection (1) the body corporate shall be deemed to have an insurable interest in all the buildings and other improvements on the land.
- (5) Any policy of insurance authorised by this section and effected by the body corporate in respect of any buildings or other improvements on the land shall not be liable to be brought into contribution with any other policy, save another policy authorised by this section in respect of the same buildings or improvements.

Compare: Victoria Act, ss 15, 16; NSW Act, s 15(1)

Subsection (1)(b) was substituted, as from 2 November 1979, by section 16 Unit Titles Amendment Act 1979 (1979 No 37).

16 Powers of body corporate

Subject to the provisions of this Act, the body corporate shall have all such powers as are reasonably necessary to enable it to carry out the duties imposed on it by this Act and by its rules: provided that the body corporate shall not have power to carry on any trading activities.

17 Dealings affecting the common property

- (1) Any instrument evidencing any transfer, lease, or grant of easement affecting the common property, or land that is to become part of the common property, may be executed by the body corporate, if the transfer, lease, or grant has been approved by unanimous resolution of the body corporate.
- (2) *[Repealed]*

Compare: NSW Act, s 10

Subsection (1) was amended, as from 2 November 1979, by section 17(1) Unit Titles Amendment Act 1979 (1979 No 37) by substituting the words “or grant of easement” for the words “grant of easement, or other dealing”, and substituting the words “or grant” for the words “grant, or dealing”.

Subsection (2) was repealed, as from 2 November 1979, by section 17(2) Unit Titles Amendment Act 1979 (1979 No 37).

18 Registration of transfers of common property

- (1) Every memorandum of transfer of the whole or any part or parts of the common property shall, in addition to any plan that the Registrar may require to be deposited under section 167 of the Land Transfer Act 1952, be accompanied by a new unit plan, which shall be in substitution for and shall be deposited under the same number as the existing unit plan, and shall show the effect of the transfer to the satisfaction of the Registrar.
- (2) Where any unit is subject to any existing registered mortgage, charge, lease, or sublease, the Registrar shall not register any transfer of the whole or any part or parts of the common property until there has been produced to him a consent in writing by every registered mortgagee, annuitant, lessee, and sublessee to the release of his interest in the land comprised in the transfer; and upon registration of the transfer each such consent shall operate as a discharge of the mortgage or charge, or a surrender of the lease or sublease, as to the land comprised in the transfer, as the case may be.
- (3) The Registrar shall register any transfer to which subsection (1) refers by—
 - (a) causing an appropriate memorial relating to the transfer to be noted on the new unit plan and on the supplementary record sheet; and
 - (b) issuing in the name of the transferee a certificate of title to the land transferred free from any incidental rights existing over the land by virtue of section 11.
- (4) Nothing in this section shall restrict section 20.
- (5) The foregoing provisions of this section shall apply to every case where any common property is taken by proclamation: provided that, if the body corporate so requests by notice in writing, the Chief Surveyor shall, at the expense of the Crown, prepare the new unit plan required by subsection (1).

Compare: NSW Act, s 10

Subsection (5) was inserted, as from 2 November 1979, by section 18 Unit Titles Amendment Act 1979 (1979 No 37).

19 Additions to common property

- (1) Any land which is transferred, free from any registered mortgage, charge, lease, or sublease, to all the registered proprietors of all the units shown on a unit plan, whether by name or general description, may be included in the subdivision to which the unit plan relates as part of the common property if the transfer contains or has endorsed thereon or annexed thereto a request by the body corporate that purports to be given pursuant to a unanimous resolution of the body corporate, or a request by the transferees, to the Registrar so to do, and—
 - (a) in a case where a stratum estate in freehold exists in the units shown on the plan, the transfer is of an estate in fee simple in the land to which it relates; or
 - (b) in a case where a stratum estate in leasehold exists in the units shown on the plan, the transfer is of an estate as lessee or licensee in the land to which it relates under a lease or licence from the grantor of the lease or licence of the land already included in the subdivision, being a lease or licence for the same remaining period, on the same terms and conditions, and containing the same provisions as the current lease or licence of the land already included in the subdivision.
- (2) A unit (together with the undivided share in common property of the proprietor of that unit) which is transferred, free from any registered mortgage, charge, lease, or sublease, to the proprietors of the other units shown on a unit plan, whether by name or general description, may be included in the subdivision as part of the common property if the transfer contains a request by the body corporate that purports to be given pursuant to a unanimous resolution of the body corporate, or a request by the transferees to the Registrar so to do.
- (3) Every transfer to which subsection (1) or subsection (2) relates shall, when lodged for registration, be accompanied by a new unit plan, which shall be in substitution for and shall be deposited under the same number as the existing unit plan, and shall show the effect of the transfer to the satisfaction of the Registrar, and shall have endorsed thereon in accordance with

regulations made under the Survey Act 1986 a full amended schedule of unit entitlements.

- (4) The registration of any such transfer containing a request referred to in subsection (1) or subsection (2) shall have the effect of including the transferred land or unit as part of the common property. The undivided share of the proprietor of each other unit in the land or units so included as part of the common property shall be held by him subject to the same terms, conditions, liabilities, and encumbrances as those on and subject to which he held the unit immediately before the registration of the transfer, and subject in all respects to any instrument of mortgage, charge, lease, or sublease then affecting his unit as if the transferred land had been included in the instrument expressly.
- (5) The Registrar shall register any such transfer by—
- (a) entering a memorial of the transfer on the relevant certificate of title in accordance with section 92 of the Land Transfer Act 1952, which shall apply accordingly; and
 - (b) entering on the new unit plan and on the supplementary record sheet an appropriate memorial relating to the transfer; and
 - (c) entering on the new unit plan a memorial of any easement that is appurtenant to the land shown on that plan or to which that land is subject; and
 - (d) where the transfer is of a unit shown on the existing plan, recording on that plan that the unit entitlement of that unit has been cancelled and that the aggregate unit entitlement shown on the plan has been reduced by the amount of the unit entitlement of that unit.
- (6) Nothing in this section shall restrict section 20.

Compare: Victoria Act, s 13(6)-(9)

Subsection (3) was amended, as from 1 April 1987, by section 81(3) Survey Act 1986 (1986 No 123) by substituting the words “Survey Act 1986” for the words “Surveyors Act 1966”.

Subsection (5)(d) was amended, as from 2 November 1979, by section 19 Unit Titles Amendment Act 1979 (1979 No 37) by omitting the words “the new unit” and substituting the word “that”.

20 Supplementary record sheets and new unit plans

- (1) The Registrar shall, as soon as it becomes necessary for the purposes of this Act to do so, set up in relation to any unit plan and body corporate, a supplementary record sheet on which he shall note appropriate memorials relating to—
 - (a) all instruments which are registered and which affect the whole or any part of the common property (independently of the units) to which the unit plan relates; and
 - (b) all other matters which, in accordance with this Act, have to be noted thereon.
- (2) Every supplementary record sheet shall be filed in the same manner as a certificate of title, and the number of the supplementary record sheet shall be entered on the unit plan or recorded copy thereof.
- (3) In any case where, under any of the provisions of sections 18, 19, and 44, a new unit plan is deposited under the same number as a previous unit plan—
 - (a) the previous unit plan shall be filed under a different number;
 - (b) the plan so deposited shall be noted so as to show clearly that it is in substitution for the earlier plan, which plan shall be identified by the number under which it is filed;
 - (c) where any unit is described in any certificate of title or in any other instrument whatsoever by reference to a numbered unit plan in respect of any land, the reference shall be read as a reference to the plan for the time being deposited under that number in respect of that land.
- (4) The Registrar shall,—
 - (a) whenever he issues a copy of a previous unit plan, indicate on the copy the number under which that plan has been refiled; and
 - (b) whenever he issues a copy of any unit plan in respect of which a supplementary record sheet has been set up, indicate on the copy the reference number of that sheet.

Part 2

Special provisions relating to leasehold land

21 Application of Part 2

- (1) Where a deposited unit plan relates to an estate as lessee or licensee in any land, the provisions of this Part shall apply notwithstanding anything contained or implied in the lease or licence or any enactment or rule of law to the contrary.
- (2) The provisions of Parts 1, 3, and 4 in so far as they relate to an estate as lessee or licensee in any land shall be read subject to the provisions of this Part.
- (3) In this Part the term **lease** includes a licence, and the terms **lessor** and **lessee** have corresponding meanings.

22 Preservation of lessor's interest

- (1) Neither the deposit of any such unit plan nor any dealing with any unit shown on any such unit plan shall be or shall be deemed to be a severance of the lessor's reversionary estate in the land.
- (2) Subject to the provisions of this Part the lessor may deal with the reversionary estate in the land in all respects as if the unit plan had not been deposited.

23 Powers of body corporate in respect of lease

- (1) Subject to the provisions of this Part, upon the deposit of any such unit plan and until the cancellation thereof, the body corporate shall become and be entitled to sue and be sued as if it were the lessee under the lease and had all rights, powers, and privileges belonging or appertaining thereto, and shall become and be subject to and liable for the same requirements and liabilities as those to which it would have been subject and liable if named in the lease originally as lessee of the land: provided that the body corporate shall not be entitled to call for the issue of a certificate of title in respect of its estate as lessee.
- (2) No cause of action in respect of any breach by the lessor of any covenant, agreement, or stipulation expressed or implied in the lease and on the part of the lessor to be performed or

observed shall lie at the suit of a proprietor of any unit or the registered proprietor of any estate or interest in any unit.

- (3) Subject to the provisions of subsection (2) of section 27, no cause of action in respect of any breach by the proprietor of any unit or the registered proprietor of any estate or interest in any unit of any covenant, agreement, or stipulation expressed or implied in the lease and on the lessee's part to be performed or observed shall lie at the suit of the lessor.

24 Dealing with stratum estate in leasehold

The lessor's consent shall not be required to any dealing with a stratum estate in leasehold:

provided that for the purposes of this subsection the deposit of a plan of redevelopment in accordance with the provisions of section 44 affecting any unit shall not be deemed to be a dealing with the stratum estate in leasehold in that unit.

25 Restrictions on surrenders and releases

- (1) After the deposit of a unit plan to which this Part applies, and until the cancellation thereof, the following provisions shall apply:
- (a) no proprietor of a unit shall surrender or agree to surrender the stratum estate in leasehold in that unit to the lessor, whether for valuable consideration or otherwise:
 - (b) the lessor shall not release or agree to release any unit or the common property or any part of the common property from the lease, whether for valuable consideration or otherwise:
 - (c) where the proprietor of a unit purchases or acquires (whether by operation of law or otherwise) the lessor's reversionary estate in the land, that estate shall not merge with the stratum estate in leasehold in that unit:
 - (d) where the lessor purchases or acquires the stratum estate in leasehold in any unit (whether by operation of law or otherwise) that estate shall not merge with the lessor's reversionary estate.
- (2) Any purported surrender or release in contravention of paragraph (a) or paragraph (b) of subsection (1) shall be void and of no effect.

- (3) Nothing in this section shall operate to prohibit:
- (a) all the proprietors of all the units from dealing with the estate as lessee in the common property as a whole or in any part or parts of the common property:
 - (b) all the proprietors of all the units from surrendering or agreeing to surrender to the lessor the stratum estates in leasehold in all the units:
 - (c) the lessor from releasing or agreeing to release all the units together with the whole of the common property from the lease.

26 Implied guarantee by unit proprietors

- (1) Each proprietor for the time being of a unit to which this Part applies shall be deemed to have guaranteed to the lessor the payment by the body corporate of the rent reserved under the lease on the days and in the manner prescribed therein, and the performance or observance by the body corporate of the covenants, agreements, and stipulations contained or implied in the lease and on the lessee's part to be performed or observed:
- provided that the liability of each such proprietor under the guarantee hereby deemed to have been given in respect of any rent or other money payable under the lease to the lessor (including any money which has become payable by virtue of any breach by the body corporate of any covenant, agreement, or stipulation contained or implied in the lease) shall be limited to such proportion of the rent or other money so payable as the unit entitlement of that proprietor's unit bears to the aggregate unit entitlement of all the units shown on the plan, and shall relate only to rent and other money due or accruing due while he is the proprietor of that unit.
- (2) No neglect or forbearance of the lessor in endeavouring to obtain payment of the rent or other money payable under the lease or to enforce the performance or observance of the covenants, agreements, and stipulations contained or implied therein by the body corporate, and no time or other indulgence which may be given to the body corporate by the lessor shall release, exonerate, or in any way affect the liability of any proprietor under subsection (1).

- (3) Where the proprietor of any unit pays to the lessor any sum which he is liable to pay under the provisions of subsection (1), he shall be entitled to recover the sum from the body corporate as a debt in any Court of competent jurisdiction: provided that nothing in this subsection shall prevent the body corporate from claiming any sum due to it from that proprietor under the provisions of this Act by way of set-off.

27 Exclusion of powers of forfeiture, re-entry, and distress

- (1) After the deposit of a unit plan to which this Part applies, and until the cancellation thereof,—

(a) no right of forfeiture or re-entry (whether for non-payment of rent or otherwise) shall be exercisable by the lessor:

(b) *[Repealed]*

- (2) Where the proprietor of any unit becomes liable under the provisions of subsection (1) of section 26 to pay to the lessor any sum (whether in respect of rent or other money payable under the lease) the lessor may enforce payment of the sum in the same manner as he would have been able to if the sum had been rent in arrear from the date on which the liability of that proprietor to pay arose and that proprietor had been the lessee under the lease:

provided that nothing in this subsection shall entitle, empower, or authorise the lessor to forfeit or determine that proprietor's interest under the lease.

Section 27(1)(b): repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

28 Lessor may apply for appointment of administrator or cancellation of unit plan

- (1) Whenever the rent or any part thereof is in arrear for the space of 1 month, or whenever the body corporate has failed to perform or observe any of the covenants, conditions, or stipulations contained or implied in the lease and on the part of the lessee to be performed or observed, the lessor may—

(a) apply to the Court for the appointment of an administrator, in which case the provisions of section 40 shall, with any necessary modifications, apply; or

- (b) apply to the Court for the cancellation of the unit plan, in which case the provisions of section 46 shall, with any necessary modifications, apply.
- (2) Where on an application made by the lessor under paragraph (b) of subsection (1) the Court makes a declaration authorising the cancellation of the unit plan, then, if all conditions and directions imposed or given by the Court have been complied with, the lessor may, within 6 months after the date of the declaration, apply to the Registrar for cancellation of the plan, in which case the provisions of section 47 shall, with any necessary modifications, apply.
- (3) Notwithstanding the provisions of subsection (1) no application pursuant to paragraph (a) or paragraph (b) of that subsection shall be made by the lessor unless and until the lessor serves on the body corporate a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the body corporate to make compensation in money for the breach, and the body corporate fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation therefor in money to the satisfaction of the lessor:
provided that no such notice shall be required in case of non-payment of rent.
- (4) Where the lessor is applying to the Court under paragraph (b) of subsection (1) for the cancellation of the unit plan, the body corporate may apply to the Court for relief; and the Court, having regard to the conduct of the parties and to all the circumstances of the case, may grant or refuse relief, as it thinks fit; and if it grants relief may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case thinks fit.

29 Expiry of lease

- (1) The term of the lease or any renewed or extended term shall be deemed not to have expired until the unit plan has been cancelled or a certificate of expiry has been registered in accordance with the provisions of subsection (3).

- (2) Upon the cancellation of the unit plan the term of the lease shall be deemed to expire, unless the lessor, in writing, has consented to the cancellation of the plan and agreed that the lease is to continue in force according to its tenor.
- (3) At any time after the date on which the lease or any extended or renewed term is by the relevant instrument expressed to expire, the lessor or any persons who are together entitled to exercise more than one-third of the votes on an ordinary resolution of the proprietors, on giving 14 days' prior notice in writing to the body corporate, may lodge with the Registrar a certificate of expiry in form 3 in Schedule 1, and the Registrar, on receiving the certificate, if he is satisfied that the term of the lease or any extended or renewed term has expired, and subject to the provisions of subsection (5), shall—
 - (a) cancel the unit plan;
 - (b) cancel the certificate of title to each of the units; and
 - (c) enter a memorial of the expiry of the term upon the lease and upon the outstanding duplicate thereof and upon the lessor's certificate of title; and for this purpose the outstanding copy of the lease and of the lessor's certificate of title shall be delivered to the Registrar when the certificate of expiry is lodged with him.
- (4) Where the body corporate has applied to the Court for any relief under section 264 of the Property Law Act 2007, it may serve a copy of the application on the Registrar.
- (5) Notwithstanding the provisions of subsection (3), where a copy of an application has been served on the Registrar under subsection (4) he shall not register a certificate of expiry without an order from the Court:
provided that he may register such a certificate if the proprietors who are together entitled to exercise more than one-third of the votes on an ordinary resolution request him in writing to do so.

Section 29(4): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

30 Renewal or expiry of lease and purchase of reversionary interest

- (1) Where under the lease a right of renewal of the lease or an option to purchase the reversionary estate in the land is given to the lessee, the following provisions shall apply:
 - (a) in the case of a right of renewal or extension of the lease, the consent of any number of persons who are together entitled to exercise not less than two-thirds of the votes on an ordinary resolution shall be sufficient to approve the terms of the renewal or extension of the lease:
 - (b) in the case of an option to purchase the reversionary estate in the land, the consent of the proprietors of all the units shall be required to the terms of the purchase.
- (2) Where on the expiry of the lease the lessee is entitled under the lease to an amount equal to the value of any buildings, fixtures, and other improvements on the land or to any part thereof, then, notwithstanding the provisions of section 23, the persons who were the proprietors of the units immediately before the expiry shall be entitled to receive that amount in shares proportionate to the unit entitlement of their respective units:

provided that, if the Court considers that it is inequitable to apportion that amount among those persons in those shares it may apportion that amount among them in shares proportionate to the relative values of the units.

31 Merger

- (1) Where the lessor has purchased or acquired (whether by operation of law or otherwise) the stratum estates in leasehold in all the units shown on the unit plan, or all the proprietors of all the units shown on the plan have purchased or acquired (whether by operation of law or otherwise) the reversionary estate in the whole of the land, the provisions of this section shall apply.
- (2) In the case where the lessor has purchased or acquired the stratum estates in leasehold in all the units shown on the plan, those estates shall not merge with the lessor's reversionary estate in the land unless and until the lessor deposits with the Registrar a declaration that it is his intention that such merger should occur.

- (3) In the case where all the proprietors of all the units shown on the plan have purchased or acquired the reversionary estate in the whole of the land, that estate shall not merge with the stratum estates in leasehold in these units unless and until—
 - (a) that reversionary estate is purchased or acquired by those proprietors in shares proportional to the unit entitlement of their respective units; and
 - (b) the registered proprietors deposit with the Registrar a declaration that it is their intention that such merger should occur.
- (4) The effect of a merger in any case to which this section applies shall be:
 - (a) in any case where the lessor has purchased or acquired the stratum estates in leasehold in all of the units shown on the plan, to vest the stratum estate in freehold in each of the units in the lessor; or
 - (b) in any case where all the registered proprietors of the stratum estates in leasehold in all of the units shown on the plan have purchased or acquired the reversionary estate in the land, to vest the stratum estate in freehold in each of the units in the person who immediately before the merger was the proprietor of that unit.
- (5) On the deposit of any declaration under subsection (2) or paragraph (b) of subsection (3), the Registrar, if he is satisfied that the stratum estates in leasehold in all of the units shown on the plan have merged under the provisions of this section with the reversionary estate in the land, shall—
 - (a) note on the supplementary record sheet a memorial of the merger;
 - (b) cancel the certificate of title in respect of the stratum estate in leasehold in each of the units, and issue a certificate of title in respect of the stratum estate in freehold in each of the units to the person entitled thereto in accordance with the provisions of subsection (4);
 - (c) cancel the lease; and
 - (d) cancel the lessor's certificate of title.
- (6) For the purposes of subsection (5) the outstanding copy of the lease and of every such certificate of title shall be delivered to the Registrar at the time of the deposit of the declaration.

Part 3

Miscellaneous provisions

32 Recovery of contributions

Any contribution levied in accordance with the provisions of paragraph (c) of subsection (2) of section 15 shall be due and payable in accordance with the terms of the relevant determination; and so much of the amount as from time to time becomes payable may be recovered as a debt by the body corporate in an action in any Court of competent jurisdiction from the person who was the proprietor of the unit at the time when the amount became payable or (subject to the provisions of section 36) from the proprietor of the unit at the time when the proceedings are instituted.

Compare: Victoria Act, s 17; NSW Act, s 15(3)(a)

33 Recovery of money expended for repairs and other work

Where the body corporate does any repair, work, or act which it is required or authorised by or under this Act or by or under any other Act to do (whether or not the repair, work, or act is done pursuant to any notice or order served on it by a local authority or public body) but the repair, work, or act is substantially for the benefit of 1 unit only, or is substantially for the benefit of some of the units only or benefits 1 or more of the units substantially more than it benefits the others or other of them, any expense incurred by it in doing the repair, work, or act shall be recoverable by it as a debt in any Court of competent jurisdiction in accordance with the following provisions—

- (a) so far as the repair, work, or act benefits any unit by a distinct and ascertainable amount, the proprietor at the time when the expense was incurred and (subject to the provisions of section 36) the proprietor at the time when the action is instituted shall be jointly and severally liable for the debt; or
- (b) so far as the amount of the debt is not met in accordance with the provisions of paragraph (a), it shall be apportioned among the units that derive a substantial benefit from the repair, work, or act rateably according to the unit entitlements of those units, and in the case of each such unit the proprietor at the time when the expense

was incurred and (subject to section 36) the proprietor at the time when the action is instituted shall be jointly and severally liable for the amount apportioned to that unit:

provided that, if the Court considers that it would be inequitable to apportion the amount of the debt in proportion to the unit entitlements of the last-mentioned units, it may apportion that amount in relation to those units in such shares as it thinks fit, having regard to the relative benefits to those units.

Compare: Victoria Act, s 18

34 Recovery of money expended where person at fault

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

Compare: Victoria Act, s 19

34A Interest on money owing to body corporate

Where, under any of sections 32 to 34, any registered proprietor owes any money to the body corporate, interest shall accrue in respect of so much of the debt as remains unpaid at such rate as the body corporate shall from time to time determine, being not more than 10% per annum.

This section was inserted, as from 2 November 1979, by section 20(1) Unit Titles Amendment Act 1979 (1979 No 37).

35 Limitation of liability of proprietors

Subject to this Act, a proprietor shall not be liable to pay or to contribute to the funds of the body corporate any amount exceeding the due proportion recoverable from him under sec-

tions 15(2) and 32 of any amount required to discharge any liability accrued or prospective of the body corporate.

Compare: Victoria Act, s 19

36 Certificate of proprietor's liability

The body corporate shall, on the application of a proprietor, any person authorised in writing by him, or a purchaser or mortgagee of a unit, certify—

- (a) the amount of any contribution determined as the contribution of the proprietor and the period to which the determination relates:
- (b) the manner and time of payment of that contribution:
- (c) the extent to which that contribution has been paid by the proprietor:
- (d) any amount then recoverable by the body corporate from the proprietor pursuant to sections 14(3), 15(2), and 32:
- (e) whether or not the body corporate has performed or entered into any contract to perform or resolved to perform any repair, work, or act in respect of which a liability has been or is likely to be incurred by the proprietor under section 33 or section 34 and the general nature of the repair, work, or act:
- (ea) the rate at which interest is accruing, pursuant to section 34A, in respect of any amount owing to the body corporate by the proprietor:
- (f) whether or not it has received notice that any proceedings are pending against the body corporate—

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

Compare: Victoria Act, s 23; NSW Act, s 15(3)(b)

Paragraph (ea) was inserted, as from 2 November 1979, by section 20(2) Unit Titles Amendment Act 1979 (1979 No 37).

37 Rules

- (1) Except as otherwise provided by this Act, the control, management, administration, use, and enjoyment of the units and the common property shown on a unit plan, and the activities

of the body corporate that comprises the proprietors of those units, shall, while there are more proprietors than one, be regulated by the rules for the time being applicable to that body corporate.

- (2) Subject to any amendment or repeal thereof or addition thereto the rules applicable to each body corporate shall be those set out in Schedules 2 and 3.
- (3) The rules in Schedule 2 and any additions thereto or amendments thereof may be added to or amended or repealed in relation to any body corporate by unanimous resolution of the proprietors and not otherwise.
- (4) The rules in Schedule 3 and any additions thereto or amendments thereof may be added to, amended, or repealed in relation to any body corporate by resolution of the body corporate at a general meeting.
- (5) Any amendment of or addition to any rule shall relate to the control, management, administration, use, or enjoyment of the units or the common property, or to the regulation of the body corporate, or to the powers and duties of the body corporate (other than those conferred or imposed by this Act):
provided that no powers or duties may be conferred or imposed by the rules on the body corporate which are not incidental to the performance of the duties or powers imposed on it by this Act or which would enable the body corporate to acquire or hold any interest in land or any chattel real or to carry on business for profit.
- (6) No rule or addition to or amendment or repeal of any rule shall prohibit or restrict the devolution of units, or any transfer, lease, mortgage, or other dealing therewith, or destroy or modify any right implied or created by this Act.
- (7) No addition to or amendment or repeal of any rule pursuant to subsection (3) or subsection (4) shall have effect until the body corporate has lodged a notification thereof in form 4 in Schedule 1 with the Registrar, and the Registrar has recorded it appropriately on the supplementary record sheet.
- (8) The body corporate shall keep a record of the rules in force from time to time.

- (9) The body corporate shall, on the application of a proprietor, or a person authorised by a proprietor to apply, supply to him a copy of the rules in force, and may require him to pay a reasonable charge.
- (10) The body corporate shall, on the application of any person who satisfies the body corporate that he has a proper interest in so applying, make the rules available for inspection.
- (11) The rules shall be binding on—
- (a) the body corporate;
 - (b) all proprietors; and
 - (c) any other person in actual occupation of a unit—
- and shall enure for the benefit of the body corporate and every proprietor.
- (12) The body corporate or any proprietor shall be entitled to apply to any Court of competent jurisdiction for an order—
- (a) enforcing the performance of or restraining the breach of any rule; or
 - (b) awarding damages for any loss or damage arising out of the breach of any rule—
- by any person bound to comply therewith or by the body corporate.

Compare: Victoria Act, s 24

38 Provisions relating to insurance

- (1) In this section, unless the context otherwise requires,—
- insurer** means an insurer in respect of a principal insurance policy
- mortgagee** means a mortgagee who, by virtue of subsection (3), has an insurable interest in the property covered by a principal insurance policy
- principal insurance policy**, in relation to the units and common property shown on a unit plan, means the policy of insurance effected by the relevant body corporate in accordance with section 15(1)(b).
- (2) The succeeding provisions of this section shall apply notwithstanding any enactment or rule of law or agreement to the contrary.

- (3) Every unit proprietor, and every person entitled as mortgagee by virtue of a registrable mortgage in respect of any unit, has an insurable interest in the property covered by the principal insurance policy.
- (4) The body corporate shall inform the insurer, and keep him informed, by notice in writing of the name and address of every proprietor and every mortgagee:
provided that nothing in this subsection shall prevent any unit proprietor or mortgagee from giving such notice to the insurer.
- (5) No principal insurance policy shall lapse or be cancelled, but shall remain in full force and effect, until—
 - (a) the insurer has served on every unit proprietor, and every mortgagee, of which he has had notice aforesaid a notice to the effect that the policy shall lapse or be cancelled on the date specified in the notice, being not earlier than 30 days after the date on which the notice is so served; and
 - (b) the date specified in the notice has arrived.
- (6) Notwithstanding anything in paragraph (a) of subsection (5), it shall be sufficient for the purposes of that paragraph if the insurer sends the required notice to a unit proprietor or mortgagee by registered post addressed to him at the last address of which notice has been given to the insurer under subsection (4).
- (7) In any case where the insurer considers that default has been made under the principal insurance policy, whether in respect of the payment of premiums or otherwise, he shall specify in the notice the default complained of, and shall state that the lapsing or cancellation of the policy is conditional upon the default not being remedied before the date specified in the notice in accordance with subsection (5)(a).
- (8) Unless by unanimous resolution all the proprietors otherwise resolve, all money paid by the insurer pursuant to the principal insurance policy shall be applied in or towards reinstatement, and, where it is to be so applied, no mortgagee shall be entitled to demand that any part of any such money be applied in or towards repayment of the mortgage debt.

- (9) Nothing in this section shall limit or affect the rights of any person in or to the proceeds of the principal insurance policy pursuant to any of the provisions of sections 45 to 48.

This section was substituted, as from 2 November 1979, by section 21(1) Unit Titles Amendment Act 1979 (1979 No 37).

39 Further provisions relating to insurance

- (1) Nothing in section 15 or section 38 shall limit the right—
- (a) of a proprietor to effect a policy of insurance in respect of the destruction of or damage to his unit:
 - (b) of a mortgagee of a unit to require the proprietor, as a condition of the loan, to effect a policy of insurance (in this section referred to as a **mortgage redemption policy**) to indemnify the proprietor against liability to repay the whole or any part of the sum secured to the mortgagee in the event of the destruction or damage of the unit.
- (2) Any payment made under a mortgage redemption policy by the insurer shall be made to the mortgagees whose interests are noted on the policy in the order of their respective priorities.
- (3) No mortgage redemption policy shall be liable to be brought into contribution with any other policy of insurance except another mortgage redemption policy effected in respect of the same mortgage debt.
- (4) This section shall apply notwithstanding any rule of law to the contrary.

This section was substituted, as from 2 November 1979, by section 22 Unit Titles Amendment Act 1979 (1979 No 37).

40 Appointment of administrator

- (1) 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.
- (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. The remuneration and expenses of the administrator shall be an administrative expense within the meaning of this Act.

- (3) The administrator shall, to the exclusion of the body corporate 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.
- (4) The administrator may, in writing, delegate any of the powers so vested in him and at any time revoke any such delegation.
- (5) The Court may, in its discretion on the application of the administrator or any other person referred to in subsection (1), remove or replace the administrator.
- (6) On any application made under this section the Court may make such order for the payment of costs as it thinks fit.
- (7) Nothing in this section shall permit an administrator to do anything which requires a unanimous resolution or prevent the passing of a unanimous resolution; but, without restricting the generality of subsection (3), the administrator shall, subject to any order of the Court, be entitled on his own initiative and to the exclusion of the body corporate to do any act which under the rules may be done by special resolution only.
- (8) An administrator when appointed shall forthwith lodge with the Registrar a sealed copy of the order of the Court making the appointment.

Compare: Victoria Act, s 30; NSW Act, s 23

41 Exercise of voting rights

- (1) At any meeting of the body corporate or of the committee, a power of voting—
 - (a) shall not be exercised by any person who is less than 18 years of age but (except where a power of voting is conferred by paragraph (b)) may be exercised on behalf of any such person by a person appointed by a District Court for that purpose:
 - (b) shall not be exercised by any person who is a person subject to a property order under the Protection of Personal and Property Rights Act 1988, or by any person over the age of 18 years who is by any rule of law incompetent to deal with his property, but may be exercised on behalf of any such person by the person

who is for the time being authorised by law to control or administer the unit or property to which the power of voting relates.

- (2) A proprietor's voting rights shall not be affected by reason only of the fact that his interest in his unit is subject to a registered mortgage, but, on giving written notice to the body corporate, the mortgagee shall be entitled to exercise those rights—
- (a) in accordance with any provision to that effect in the mortgage; or
 - (b) so long as he is in possession of the unit.
- (3) Where any person by whom a power of voting is exercisable is dead or is out of New Zealand or cannot be found and for that reason or any other reason it is impracticable to obtain the exercise by a person of his power of voting, or where it is not known by what person a power of voting is exercisable, the Court, on the application of the body corporate or of any interested party, may by order—
- (a) appoint some fit and proper person for the purpose of exercising such powers of voting as the Court determines, and thereupon the appointment shall take effect accordingly; or
 - (b) declare that any person's power of voting shall be dispensed with either on a particular occasion or generally, in which case the provisions of this Act or of any rule as to voting shall have effect as if no power of voting were exercisable by that person on the particular occasion or generally, as the case may be.
- (4) On making any order under this section, the Court may make such provision as it thinks necessary or expedient to give effect to the order, and may provide for the payment of costs as it thinks fit.
- (5) The Court may from time to time cancel, vary, modify, or discharge any order made by it under this section.

Compare: Victoria Act, s 31; NSW Act, s 24, 26

Subsection (1)(b) was amended, as from 1 October 1988, by section 117(3) Protection of Personal and Property Rights Act 1988 (1988 No 4) by substituting the words "person subject to a property order under the Protection of Personal and Property Rights Act 1988" for the words "protected person within the meaning of the Aged and Infirm Persons Protection Act 1912".

The words “District Court” were substituted for the words “Magistrate’s Court” pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125), as from 1 April 1980.

42 Relief in cases where unanimous resolution required

In any case where, in accordance with this Act or rules under this Act, a unanimous resolution, or the consent, of all the proprietors is necessary before any act may be done and that resolution or consent is not obtained, but the resolution or act is supported by 80% 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.

43 Relief for minority

In any case where this Act requires, or the rules of a body corporate require, that a resolution (other than a unanimous one) or the consent of a certain percentage of the voters is necessary before any act may be done, and any such resolution is duly passed or any such consent is obtained, any person who voted against the resolution or did not consent may apply to the Court to have the resolution or decision declared to be of no effect on the grounds that in the circumstances of the case the effect of the act would be inequitable for the minority; and if the Court so orders, the resolution shall be deemed not to have been passed or the consent shall be deemed not to have been obtained.

44 Redevelopment

- (1) On a redevelopment, application shall be made to the Registrar for the deposit of a plan of redevelopment, being a new unit plan in substitution for the existing unit plan. The new unit plan shall be deposited under the same number as the existing unit plan, and the provisions of section 20 shall apply accordingly.

- (2) Subject to the provisions of this section, a plan of redevelopment shall comply with all the requirements of this Act as to unit plans, and shall in addition—
- (a) define the boundaries of the new units or the enlarged or reduced units:
 - (b) show all new units and any enlarged or reduced unit marked with numbers or letters not already used on the unit plan:
 - (c) bear a legend specifying which of the new units, enlarged units, and reduced units are principal units and which are accessory units:
 - (d) in the case of a subdivision into 2 or more new units, enlarged units, or reduced units, have endorsed thereon a schedule apportioning among the new units, enlarged units, and reduced units the unit entitlement of the former unit or units included in the redevelopment, which apportionment shall be determined by a registered valuer within the meaning of the Valuers Act 1948, subject to payment to the valuer of such fee as he may fix.
- (3) Where a redevelopment involves the inclusion in a unit of part of the common property or the erection of 1 or more units on the common property, the unit entitlements of all units that will be on the land to which the plan of redevelopment relates shall be re-assessed by the a registered valuer within the meaning of the Valuers Act 1948, who shall (subject to payment to the registered valuer of such fee as he may fix) assign to every such unit a new unit entitlement to be fixed by him on the basis of the relative value of the unit in relation to each other such unit at the date on which the re-assessment is made:
provided that the registered valuer may, in his discretion, make the re-assessment as at the date on which the current unit entitlements were fixed in any case where he considers that the redevelopment is of a relatively minor nature.
- (4) A plan of redevelopment shall not be deposited unless—
- (a) the application is made by the sole proprietor of the units, or by the proprietors of all the units pursuant to their unanimous resolution; and

- (b) every person who is entitled as mortgagee by virtue of any registered mortgage in respect of any unit affected by the redevelopment, and every caveator who claims any estate or interest in any unit affected by the redevelopment (being a caveator whose caveat was lodged with the Registrar before deposit of the plan of redevelopment) has consented in writing to the redevelopment.
- (5) On the deposit of a plan of redevelopment and the registration of any necessary transfers, the Registrar shall—
 - (a) cancel the existing certificates of title to the units affected by the redevelopment, and for that purpose the outstanding copies of the certificates of title shall be surrendered to the Registrar; and
 - (b) issue separate certificates of title in accordance with the plan of redevelopment for the units affected by the redevelopment.

(6) *[Repealed]*

Compare: Victoria Act, s 34

Subsection (1) was substituted, as from 2 November 1979, by section 23(1) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (2) was amended, as from 2 November 1979, by section 23(2) Unit Titles Amendment Act 1979 (1979 No 37) by inserting the words “Subject to the provisions of this section,”.

Subsection (2)(d) was amended, as from 1 July 1998, by section 54(1) Ratings Valuations Act 1998 (1998 No 69) by omitting the words “the Valuer-General, or”, the words “the Valuer-General or the” and the words “, as the case may be,”. *See* sections 55 to 63 for the savings and transitional provisions.

Subsection (3) was amended, as from 1 July 1998, by section 54(1) Ratings Valuations Act 1998 (1998 No 69) by omitting the words “the Valuer-General, or”, the words “the Valuer-General or” and the words “, as the case may be,”. *See* sections 55 to 63 for the savings and transitional provisions.

Subsection (4)(b) was substituted, as from 2 November 1979, by section 23(3) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (6) was repealed, as from 1 July 1998, by section 54(1) Ratings Valuations Act 1998 (1998 No 69). *See* sections 55 to 63 for the savings and transitional provisions.

45 Cancellation of plan on application of proprietors

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

- (2) Every such application to the Registrar for cancellation of a unit plan shall be in form 5 in Schedule 1, and shall be accompanied by or have lodged in support thereof—
- (a) the outstanding certificate of title for every unit;
 - (b) the outstanding copy (if any) of every registered mortgage, charge, lease, or sublease relating to any unit or to any part of the common property; and
 - (c) evidence sufficient to satisfy the Registrar in relation to the matters specified in subsection (3), and (where the interest in the land of the proprietor of each unit is a stratum estate in leasehold) evidence that the lessor has been notified of the intention to make the application:
provided that the Registrar may dispense with production of any such outstanding certificate of title or copy.
- (3) Before cancelling the unit plan, the Registrar shall satisfy himself that all rates which have been assessed in respect of the units and the common property have been paid, and that any administrator has consented to the cancellation, and that no unit is subject to any caveat, mortgage, charge, lease, or sublease registered against the title to the unit.
- (4) The cancellation of a unit plan shall be effected when a memorandum of cancellation has been appropriately entered on the plan or the recorded copy thereof and on the supplementary record sheet (if any) by the Registrar.
- (5) Upon the cancellation of the unit plan—
- (a) the estate in the land to which the persons who were the proprietors of the units immediately before the cancellation were entitled by virtue of section 9 (which relates to common property) shall remain vested in those persons in the same shares as if the unit plan had not been cancelled;
 - (b) the fee simple estate, or (as the case may be) the estate as lessee or licensee, in that part of the land which immediately before the cancellation comprised units shall vest in those persons referred to in paragraph (a) in the same shares as the estate referred to in that paragraph is held by those persons, and shall merge with that estate;
 - (c) every easement over any unit comprising part of the development shall be determined.

- (6) Where 2 or more persons were the proprietors of any unit, whether as joint tenants or tenants in common, the share in the land which vests in them as aforesaid shall, as between themselves, vest in them—
- (a) as joint tenants, if the unit of which they were the proprietors immediately before the cancellation was then vested in them as joint tenants:
 - (b) as tenants in common in shares corresponding to the shares in which the unit of which they were the proprietors was vested in them immediately before the cancellation, if that unit was then vested in them as tenants in common,—
- and the Registrar shall issue a certificate of title for the land to the persons entitled thereto in accordance with paragraphs (a) and (b).
- (7) Upon the cancellation of a unit plan the body corporate shall be deemed to be dissolved; and, unless otherwise determined beforehand by unanimous resolution of the persons who were the proprietors immediately before the cancellation, all property and money (including insurance money received by the body corporate) shall, subject to any right of set-off, be distributed among those persons according to their unit entitlements immediately before the cancellation:
provided that the body corporate shall be deemed to remain in existence to the extent that any debt is owing by it and in respect of any action pending against it, and the liability of the persons who were the proprietors immediately before the cancellation shall continue accordingly.
- (8) The Registrar must, on cancelling a unit plan, give notice to the territorial authority (as defined in the Local Government Act 2002) in whose district the land is situated that the plan has been cancelled and the body corporate dissolved.
- (9) The Registrar shall also cancel any relevant supplementary record sheet; and, for the purposes of section 67 of the Land Transfer Act 1952, that sheet shall be deemed to be a certificate of title issued under that Act in respect of that land.

Compare: Victoria Act, s 27

Subsection (3) was amended, as from 2 November 1979, by section 24(1) Unit Titles Amendment Act 1979 (1979 No 37) by substituting the words “is subject

to any caveat, mortgage, charge, lease, or sublease registered against the title to the unit” for the words “or part of the common property is subject to any caveat, mortgage, charge, lease, or sublease”.

Subsection (5)(c) was inserted, as from 2 November 1979, by section 24(2) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (8) was amended, as from 1 April 1980, by section 8(3) Local Government Amendment Act 1979 (1979 No 59) by substituting the words “territorial authority (as defined in the Local Government Act 1974) in whose district” for the words “Council of the county, borough, or town district in which”.

Subsection (8) was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (8) was amended, as from 22 October 2003, by section 3 Unit Titles Amendment Act 2003 (2003 No 101) by omitting the words “, and to the Valuer-General,”.

Subsection (9) was inserted, as from 2 November 1979, by section 24(3) Unit Titles Amendment Act 1979 (1979 No 37).

46 Application to Court for order of cancellation of plan

- (1) Where in respect of a unit plan an application in that behalf is made to the Court by the body corporate, an administrator, or the proprietor or one of the proprietors of a unit, and the Court is satisfied that, having regard to the rights and interests of any creditor of the body corporate and of every person who has any interest in any unit or in the land or in any part of the land, it is just and equitable that the body corporate be dissolved and the plan cancelled, the Court may make a declaration to that effect.
- (2) A notice of any application made under subsection (1) shall be served on every person who has an interest as a proprietor of a unit and on the Registrar, and on every mortgagee, caveator, insurer, and other person having any registered estate or interest in any unit or land to which the plan relates, and on any insurer who has effected insurance on the buildings or other improvements comprised in any unit or on the land or any part thereof; and the Registrar shall thereupon enter on the supplementary record sheet a notification that the application has been so made. Any notification so entered shall be cancelled by the Registrar if the applicant so requests and advises that the application to the Court is not proceeding, or if the Registrar is satisfied that the Court has refused to make the declaration sought.

- (3) On any application to the Court under subsection (1), any person having or claiming to have any estate or interest in any unit or in the land or in any part of the land, and any insurer who has effected insurance on the buildings or other improvements comprised in any unit or on the land or any part thereof, shall have the right to appear and be heard.
- (4) Where the Court makes a declaration under subsection (1), the Court may by order impose such conditions and give such directions (including directions for the payment of money by or to the body corporate, and the distribution of the assets of the body corporate, and directions that any consent required by subsection (3) of section 45, as applied by subsection (4) of section 47, be dispensed with) as it thinks fit, for the purpose of giving effect to the declaration.
- (5) The Court may, at any time before the unit plan is cancelled under section 47, vary or modify the terms of any declaration or order made by it under this section.
- (6) On any application under this section the Court may make such order for payment of costs as it thinks fit.

Compare: Victoria Act, s 28

47 Cancellation of plan following decision of Court

- (1) Where the Court has made a declaration authorising the cancellation of a unit plan and all conditions and directions imposed or given by the Court have been complied with, any applicant for the declaration or his successor in title may, within 6 months after the date of the declaration, apply to the Registrar for cancellation of the plan, and the Registrar shall cancel the plan accordingly.
- (2) Every such application to the Registrar for cancellation of a unit plan shall be in form 6 in Schedule 1, and shall be accompanied by or have lodged in support thereof—
 - (a) the duplicate certificate of title for every unit;
 - (b) the duplicate instrument (if any) of every registered mortgage, charge, lease, or sublease relating to any unit, the common property as a whole, or any part or parts of the common property; and

- (c) a copy of every declaration or order made by the Court under section 46 in relation to the body corporate or unit plan,—
unless the Court otherwise directs or the Registrar dispenses with the production of any such duplicate certificate of title or instrument.
- (3) Where the Court makes a declaration under subsection (1) of section 46 and any person having custody or control of any outstanding certificate of title or copy of an instrument required for the purposes of an application for cancellation of a unit plan refuses or neglects to produce it for those purposes, or where production of any such outstanding certificate of title or copy of an instrument cannot be obtained because the person last known to have custody or control thereof is dead, or is out of New Zealand, or cannot be found, or where for any other reason it is impracticable to obtain production of any such outstanding certificate of title or copy of an instrument, the Court, on the application of any interested person, may in any appropriate case order, upon such terms and conditions as it thinks fit, production thereof to the Registrar by the person so refusing or neglecting, or may in its discretion order the Registrar to dispense with production.
- (4) The following provisions of section 45 shall apply when an application is made to the Registrar under this section:
- (a) subsection (3), except to the extent that the Court otherwise directs, either on that application or on any subsequent application:
- (b) subsections (5) and (6), unless the Court otherwise directs:
- (c) subsections (4), (7), and (8).

48 Scheme following destruction or damage

- (1) Where any building or other improvement comprised in any unit or on any land to which a unit plan relates is damaged or destroyed, but the unit plan is not cancelled, the Court may, on the application of the body corporate, an administrator, the proprietor or one of the proprietors of a unit, or a registered mortgagee of a unit, by order settle a scheme including provisions—

- (a) for the reinstatement in whole or in part of such building or other improvement; or
 - (b) for the transfer of units to the proprietors of the other units so as to form part of the common property.
- (2) Where an order is made under paragraph (b) of subsection (1), the provisions of section 19 shall, so far as they are applicable, but subject to any order of the Court to the contrary, thereafter apply to any such transfer.
- (3) A notice of any application made under subsection (1) shall be served on the Registrar who shall thereupon enter on the supplementary record sheet a notification that application has been so made.
- (4) On any application to the Court under subsection (1), any person having or claiming to have any estate or interest in any unit or in the land or in any part of the land or any insurer who has effected insurance on the buildings or other improvements comprised in any unit or in the land or any part thereof shall have the right to appear and be heard.
- (5) In the exercise of its powers under subsection (1), the Court may make such orders as it considers expedient or necessary for giving effect to the scheme, including orders—
 - (a) directing the application of any insurance money;
 - (b) directing payment of money by or to the body corporate or by or to any person;
 - (c) directing the deposit of an appropriate new unit plan; or
 - (d) imposing such terms and conditions as it thinks fit.
- (6) The Court may from time to time cancel, vary, modify, or discharge any order made by it under this section.
- (7) On any application under this section the Court may make such order for payment of costs as it thinks fit.

Compare: Victoria Act, s 29

49 Joinder of actions

Where an application under section 46 or section 48 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.

50 Service of documents

- (1) The body corporate shall either—
 - (a) at or near the alignment of the front of the main building on the land, cause a letter-box, with the designation of the body corporate clearly shown on it, to be continually available in an accessible place; or
 - (b) display in a prominent place, in the vestibule to that building, its address for service.
- (2) It shall be sufficient compliance with any enactment which relates to the manner of service of any document which has to be served by any person on the body corporate or the committee, if any person authorised to serve the document—
 - (a) sends it by registered letter addressed to the body corporate or the committee, as the case may be, at its address for service; or
 - (b) places it in the letter-box referred to in subsection (1).
- (3) If the address for the service of documents on the body corporate is at any time altered, the body corporate shall forthwith send notice in the prescribed form to the Registrar of the alteration, and the Registrar shall enter a notification of the change of address on the supplementary record sheet.
- (4) For the purposes of this section the term **document** includes any summons, notice, order, and other legal process.
- (5) A notice or order requiring repairs to or work to be performed in respect of the land or any building or other improvements thereon which a local authority or public body is required or authorised by any Act, regulation, or bylaw to serve shall, notwithstanding anything in the Act, regulation, or bylaw, be served on the body corporate in the manner provided by this Act, and thereupon the notice or order shall be deemed to have been duly served and the body corporate shall be deemed to be the person bound to comply therewith.

Compare: NSW Act, s 27; Victoria Act, s 20

51 Default by body corporate

- (1) Any person (including any local authority or public body for whose benefit any requirement or duty is imposed on the body corporate by this Act or any regulations made under this Act) may apply to the Court for an order compelling the body cor-

porate to carry out the requirement or perform the duty, as the case may be, and on any such application the Court may make such order as it thinks proper.

- (2) If default is made by the body corporate in complying with any requirement or duty imposed on it by this Act or any regulations made under this Act, the body corporate, and the secretary to the body corporate if he is knowingly a party to the default, and each member of the committee who is knowingly a party to the default, commits an offence, and is liable on summary conviction to a fine not exceeding \$400.

Compare: Victoria Act, s 33; NSW Act, s 28

52 Powers of entry by local authority or public body

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 this Act.

Compare: NSW Act, s 22

53 Stratum estate as trustee investment

[Repealed]

Section 53 was repealed, as from 2 November 1979, by section 29 Unit Titles Amendment Act 1979 (1979 No 37).

54 Register of proprietors

- (1) The body corporate shall cause a register to be kept of the proprietors for the time being of the units comprised in the unit plan.
- (2) Notwithstanding anything to the contrary in this Act, where the proprietor for the time being of any unit comprised in the unit plan transfers that unit to any other person, until the body corporate is notified in writing of the transfer,—
- (a) that proprietor shall remain liable to the body corporate for all contributions levied by the body corporate under section 15(2)(c) in respect of that unit:
provided that nothing in this paragraph shall restrict that proprietor's right to recover from the transferee any

amounts that he has paid in respect of contributions so levied:

- (b) the transferee shall not be entitled to exercise the voting rights in respect of the unit, and those rights may be exercised by that proprietor:

provided that, at a general meeting of the body corporate, the transferee (and not that proprietor) may exercise those rights with the consent of the other proprietors present at the meeting.

55 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) imposing fees and charges for anything authorised by this Act:
- (b) prescribing forms for the purposes of this Act:
- (c) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

Part 4

Conversion of existing schemes

56 Application and interpretation of this Part

(1) 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 Part 7A of the Land Transfer Act 1952; or
- (b) each of the persons who are the registered proprietors as tenants in common of any estate in land in respect of which any such application is contemplated 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,—

the foregoing provisions of this Act shall apply subject to the additions and modifications set out in this Part of this Act.

- (2) In this Part of this Act, unless the context otherwise requires,—
company means a company to which paragraph (a) of subsection (1) applies

member, in relation to a company incorporated under Part 2 of the Companies Act 1993, means a shareholder as defined in section 96 of that Act and, in relation to any other company, means a member of, or shareholder in, the company

Subsection (2) was amended, as from 1 July 1994, by section 4 Land Transfer Amendment Act 1993 (1993 No 124) by inserting the definition of Member.

owners means a group of registered proprietors to whom paragraph (b) of subsection (1) applies.

Subsection (1)(a) was amended, as from 1 July 1994, by section 4 Land Transfer Amendment Act 1993 (1993 No 124) by substituting the words “Part 7A of the Land Transfer Act 1952” for the words “the Companies Amendment Act 1964”.

Subsection (1)(b) was amended, as from 2 November 1979, by section 25 Unit Titles Amendment Act 1979 (1979 No 37) by substituting the words “the registered proprietors as tenants in common of any estate in land in respect of which any such application is contemplated” for the words “registered as proprietors of any such estate as tenants in common”.

57 Conversion to be preceded by resolution or Court order

Before an application is made in accordance with this Part 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 this Act, or an order of the Court made under section 58; and
- (b) notice of the intention so to subdivide the land shall have been given in accordance with section 60.

58 Application to Court if unanimous resolution not obtained

- (1) 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 section 57, but a majority in number of the members or owners are in favour of the resolution, any member of the company or any owner may apply to the Court for an order that all necessary steps be taken in accordance with this Part by the company or the owners to subdivide, in accordance with this Act and in the manner specified in the application to the Court, the land specified in that application.

- (2) Notice of any such application shall be given to any member of the company or owner who is not a party to the application and to any other person having any registered interest in the land or shares affected by the application.
- (3) Any person having or claiming to have an estate or interest in the land or in any part of the land to which the unit plan is intended to relate or in the shares affected by the application shall have the right to be heard in any proceedings before the Court in respect of any such application.

59 Resolution or order to constitute sufficient authority for action by company or owners

A unanimous resolution by the members of an existing company or the owners to subdivide its or their land in accordance with this Act, or an order of the Court made pursuant to section 58 that the land be so subdivided, shall be sufficient authority for the company or the owners to do whatever may be required by this Act to accomplish that purpose without any further resolution of the company or the owners.

60 Notice of resolution or order

- (1) As soon as practicable after the passing of any such resolution or the making of any such order, the company or owners (as the case may be) shall—
 - (a) cause the resolution or order to be notified—
 - (i) to all persons, other than the members of the company or the owners, having a registered interest in any shares or assets of the company, or in any of the land intended to be included in the subdivision, or shown in the register to be entitled to such an interest; and
 - (ii) to the Registrar in whose office the land is registered, who shall at the same time be given by the company or the owners the particulars and things specified in subsection (2); and
 - (iii) in the case of a company, to the Registrar of Companies, who shall at the same time be given by the company the particulars and things specified in subsection (2):

- (b) *[Repealed]*
- (2) The said notice to the Registrar shall be accompanied by—
 - (a) a sealed copy of the order in any case where an order has been made; and
 - (b) *[Repealed]*
 - (c) a list of the persons on whom notice has been served, together with the relative advice of delivery or such other evidence of proper service of the notice on all interested parties aforesaid as the Registrar may require; and
 - (d) a description of the land intended to be included in the scheme sufficient for the Registrar to identify it in his records.
- (3) The said notice shall state that it is the intention of the company or the owners to subdivide its or their land in accordance with this Act unless, not later than 1 month after the date on which the notice is given to the Registrar, a caveat in form 7 in Schedule 1 is lodged, by any person claiming an estate or interest in the land or shares, with the Registrar under the Land Transfer Act 1952 forbidding the subdivision.
- (4) Where a caveat has been lodged under subsection (3), and the caveator has not consented to the deposit of a unit plan for the purposes of subsection (2) of section 62, the company or any owner may serve notice on the caveator requiring him, within 3 months from the date of the service of the notice, either to consent to the plan, or to apply to the Court for an order directing that the caveat shall not be removed.
- (5) If the caveator fails to apply to the Court for such an order within the said period of 3 months, and to consent, he shall be deemed to have consented to the unit plan.
- (6) Where a caveator makes an application to the Court under this section, the Court may—
 - (a) direct that the caveat shall not be removed; or
 - (b) direct that the caveat shall be removed either forthwith or upon compliance with such conditions as the Court may specify:
provided that, if circumstances subsequently change before the caveat is removed, the company or any owner

or the caveator may apply to the Court for a variation of the order.

- (7) On receipt by the Registrar of notice of the resolution or order aforesaid he shall make an entry on the register copies of all instruments of title in respect of the land concerned to the effect that the company or the owners have advertised an intention to subdivide the land in accordance with this Act.
- (8) In any case where the company fails to comply with subsection (1),—
- (a) the company commits an offence and is liable on summary conviction to a fine not exceeding \$1,000;
 - (b) every director of the company commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 unless the director shows that—
 - (i) the company took all reasonable and proper steps to ensure that the requirements of that subsection would be complied with; or
 - (ii) he or she took all reasonable steps to ensure that the company complied with the requirements of that subsection; or
 - (iii) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the company complied with the requirements of that subsection.
- (9) In any case where the owners fail to comply with subsection (1), every owner who is knowingly a party to the failure to comply commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

Subsection (1)(b) was repealed, as from 2 November 1979, by section 26(1)(a) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (2)(b) was repealed, as from 2 November 1979, by section 26(1)(b) Unit Titles Amendment Act 1979 (1979 No 37).

Subsection (3) was substituted, as from 2 November 1979, by section 26(2) Unit Titles Amendment Act 1979 (1979 No 37).

Subsections (8) and (9) were inserted, as from 1 July 1994, by section 4 Land Transfer Amendment Act 1993 (1993 No 124).

61 Service of notices

- (1) The notices to be given to persons having interests in the land in accordance with subsection (1) of section 60 may be given

in each case by delivering the notice by hand to the person to whom it has to be given, failing which the notice shall be sent by post in a registered letter addressed to that person at—

- (a) the last known place of residence or business of that person; or
 - (b) where no such address is known—
 - (i) the address disclosed by any instrument by which he acquired his interest in the land, in which case a duplicate of the notice shall (where possible) be sent by post in a registered letter addressed to that person care of the solicitor who or the firm of solicitors which registered the instrument; or
 - (ii) any address of that person shown in any street or business directory.
- (2) Where any such notice is sent by post in a registered letter, the letter shall be accompanied by a card provided by the Post Office providing for advice of the delivery of the letter.

62 Consents to deposit of plan

- (1) Notwithstanding anything in paragraph (f) of subsection (1) of section 5, the consent of any person other than the company or a member of the company or an owner shall not be required to the deposit of the new unit plan, if the Registrar is satisfied that every person, other than a member of the company or an owner, who has any registered estate or interest in the land in the scheme, or in any part of that land, and who does not sign the plan, has been given proper notice under section 60 and has not lodged a caveat under that section.
- (2) Where any person, having lodged a caveat pursuant to section 60, consents to the new unit plan aforesaid, and the caveat is still in force at the time, the consent to the plan shall have effect to remove the caveat, and the Registrar shall mark his records accordingly.
- (3) No unit plan shall be deposited unless every member of the company or owner, or his agent duly authorised in writing and every person having security over any unit shown on the plan under any mortgage or charge to which section 63(2) relates consents to the deposit thereof, but the Registrar may dispense with any such consent where—

- (a) he is satisfied that it would not be reasonable in any particular circumstances to insist on the consent being endorsed on the plan; and
 - (b) he has no reason to believe that the plan does not correctly define the unit of that member or owner.
- (4) Where any person whose consent is required to the deposit of the new unit plan is dead or cannot be found or refuses to consent or does not consent within a reasonable time or where for any reason it is impracticable to obtain the consent of any such person, the Court, on the application of any applicant under this Part, may if it thinks fit consent on behalf of that person to the deposit of the plan.
- (5) In any case where the Court so consents, it may, by the same or any subsequent order, require any person having the custody or control of any certificate of title or instrument to produce it to the Registrar or authorise the Registrar to dispense with the production thereof.

63 Mortgages and charges to be discharged before deposit of unit plan

- (1) No unit plan may be deposited under this Part while the land to which it relates or any part thereof is subject to any mortgage or charge unless the mortgage or charge relates to no land shown on the plan other than a proposed unit or units in respect of which (under section 8(2)) the Registrar has been requested at the time when the plan is deposited to issue a separate certificate of title.
- (2) Where a unit plan is deposited in accordance with subsection (1) while there is a mortgage or charge over any such unit or units for which (under section 8(2)) the Registrar is requested to issue a separate certificate of title, subject as hereinafter provided, the deposit of the plan and the issue of the certificate of title shall not affect the mortgage or charge; and, upon the issue of the separate certificate of title the stratum estate in the unit or units shall be subject to the mortgage or charge, and the mortgage or charge shall be notified on the certificate of title in such manner as to preserve its priority.

(3) *[Repealed]*

Subsection (3) was repealed, as from 2 November 1979, by section 26(2) Unit Titles Amendment Act 1979 (1979 No 37).

64 Effect of deposit of unit plan

- (1) On the deposit of a unit plan under this Part, the stratum estate in each unit shall vest in the person who, immediately before the plan was deposited, was the holder of shares in the company entitling him to the exclusive occupation of that unit, or the lessee under a lease of that unit from the owners to himself. Thereafter the stratum estate may devolve or be transferred, leased, mortgaged, settled, or otherwise dealt with as provided in Part 1.
- (2) On the deposit by a company of a unit plan, the company,—
 - (a) if it is a company within the meaning of section 2 of the Companies Act 1955, is deemed to be dissolved and that Act shall cease to apply to it;
 - (b) if it is a company within the meaning of section 2 of the Companies Act 1993, is deemed to have been removed from the New Zealand register and that Act shall cease to apply to it.
- (3) On the deposit, whether by a company or by the owners, of a unit plan in accordance with this Part,—
 - (a) the outstanding certificate of title to the land and every certificate relating to shares in the company, and every copy of every registered or unregistered lease or licence granted by the company to one of its members or granted by the owners to one of them, shall be of no further effect, and shall be surrendered to the Registrar, who shall not issue the relative certificate of title until this has been done;
 - (b) except as provided in the foregoing provisions of this section, all property, rights, powers, claims, and remedies whatsoever belonging to the company, or to the owners as registered proprietors of the land, immediately before the deposit of the plan, shall vest in the proprietors in accordance with Part 1;
 - (c) all existing liabilities of the company (except liability to its members in respect of share capital), or of the owners

as registered proprietors of the land, whether certain or contingent, shall be transferred to and be borne by the body corporate:

provided that nothing in this paragraph shall affect a mortgage or charge to which section 63(2) relates:

- (d) except so far as they are altered or modified expressly or by necessary implication by reason of the deposit of the unit plan under this Act, the rights, interests, duties, obligations, and liabilities of the members of the company existing in relation to the company immediately before its dissolution shall continue in existence in relation to the body corporate, and shall not be otherwise affected or abated by the dissolution:
- (e) all acts, matters, and things of a continuing nature made, done, or commenced by or on behalf of the company and immediately before its dissolution of any force or effect or capable of acquiring any force or effect shall be deemed to have been done or commenced by or on behalf of the body corporate:
- (f) any reference to the company in any document or instrument shall, if not inconsistent with the context or subject-matter, be read as a reference to the body corporate.

Subsection (2) was substituted, as from 1 July 1994, by section 4 Land Transfer Amendment Act 1993 (1993 No 124).

65 Issue of certificate of title in respect of units

- (1) On the deposit of the unit plan, the Registrar shall—
 - (a) cancel the certificate of title to the land;
 - (b) issue a certificate of title for the stratum estate to which the person who will be the proprietor of each principal unit is entitled in that unit and any accessory unit; and
 - (c) note on the unit plan the volume and folio number of the certificate of title so issued.
- (2) Every certificate of title issued under subsection (1) shall be deemed to be a certificate of title issued under the Land Transfer Act 1952, and, subject to the provisions of this Act, the provisions of that Act shall apply accordingly.

- (3) Where the certificate of title issued under this section relates to a unit in respect of which there was, before the plan was deposited, a registered lease or licence, the provisions of subsections (2), (3), and (4) of section 117 of the Land Transfer Act 1952 (as substituted by section 25 of the Land Transfer Amendment Act 1963) shall apply to the certificate of title for that unit as if it were a lease in substitution for a previously registered lease.
- (4) The provisions of subsections (2) and (3) of section 7 of the Joint Family Homes Act 1964 (as inserted by section 4 of the Joint Family Homes Amendment Act 1965 and amended by section 4 of the Joint Family Homes Amendment Act 1974) shall apply in every case where a certificate of title is issued under subsection (1) in respect of a unit that was settled as a joint family home immediately before the deposit of the new unit plan relating to that unit.

Subsection (4) was amended, as from 8 November 1974, by section 13(2) Joint Family Homes Amendment Act 1974 (1974 No 148) by inserting the words “and amended by section 4 of the Joint Family Homes Amendment Act 1974”.

Schedule 1**Forms**

Form 1

s 5(3)

Application to deposit a unit plan

I (*or We*) of [*here state address and occupation*] hereby certify:

1 That I am (*or we are*) the registered proprietor(s) of an estate in fee simple (*or as lessee (s)*) under Memorandum of Lease number () in that parcel of land—[*here state full description of parcel of land, including the area and title or index book reference*].

2 [*Repealed*]

And I (*or we*) hereby apply to deposit the plan attached hereto as a unit plan under the provisions of the Unit Titles Act 1972.

Dated:

Signed by the above-named as applicant in the presence of:

Applicant(s):

[*occupation, address*]

Form 2

s 8(1)(a)

Form of certificate of title for a stratum estate

Reference:

Prior CT:

New (*New Zealand Arms*) Zealand Stratum Estate

Memorandum of lease No:

Transfer No:

N/c Order No:

*Certificate of Title under the Land Transfer
Act 1952*

This Certificate dated the day of 19 under
the seal of the District Land Registrar of the Land Registration Dis-
trict of **witnesseth that** is seised of a
stratum estate in (freehold/leasehold) within the meaning of the Unit
Titles Act 1972, subject to such reservations, restrictions, encum-
brances, liens, and interests as are notified by memorial underwritten
or endorsed on this Certificate of Title or on the relative unit plan (and
supplementary record sheet), in the land hereinafter described, that is
to say: Principal Unit No on Unit Plan No , []
Registry, together with [*here refer to any accessory unit to which it is
intended this Certificate of Title should relate identifying each such
unit by the letter allotted to it on the relative unit plan*].

, District Land Registrar.

Form 3

s 29(2)

Certificate of expiry of lease

I, (*or* we) being the lessor under and by virtue of Memorandum of Lease Number (Registry) of all that parcel of land [*here state full description of parcel of land, including the area and title reference*] in respect of which Unit Plan Number has been deposited (*or*) the person or persons entitled to exercise more than one-third of the votes on an ordinary resolution in respect of the units shown on Unit Plan Number (Registry) **hereby certify** that the term of the lease created by Memorandum of Lease Number (Registry) (and extended/renewed by Memorandum of Variation Number) has expired.

Dated:

Signed by in the presence of:

(Lessor(s)):

[*witness, occupation, address*]

Form 4
Notice of change of rules

s 37(7)

To The District Land Registrar,
Registry,

Notice is hereby given that the rules of Body Corporate Number _____ were on the _____ day of _____ 19____ duly amended in the manner set out in the Schedule(s) 1 (and 2) hereto:

¹**And it is hereby certified** that each of the amendments set out in the Schedule 1 hereto has been duly authorised and approved by a unanimous resolution of all the proprietors who together constitute the said Body Corporate (and that each of the amendments set out in the Schedule 2 hereto has been duly authorised and approved by resolution of the said Body Corporate at a general meeting).

Dated:

²The Common Seal of Body Corporate Number _____ was hereunto affixed in the presence of—

Witness:

Witness:

Schedule 1

[Here set out in successively numbered clauses each amendment to the rules listed in the Schedule 2 to the Unit Titles Act 1972.]

Schedule 2

[Here set out in successively numbered clauses each amendment to the rules listed in the Schedule 3 to the Unit Titles Act 1972.]

Notes

¹Where all the units are owned by the same proprietor this certificate should be omitted.

²Where there are fewer than 4 members each proprietor may sign the notice instead of affixing the common seal of the body corporate.

Form 5

s 45(2)

Application to cancel a Unit Plan by consent

I (or We) [*here state name, address, and occupation*] being the proprietor(s) of all the units shown in Unit Plan Number (Registry) hereby apply to have the said Unit Plan cancelled.

Dated:

Signed by the above-named as applicant(s) in the presence of:

(Applicant(s)):

[*occupation, address*]

¹*Certificate as to debts and as to notice*

We, the undersigned, being the members of the Committee and the Secretary of the said Body Corporate Number hereby certify:

- 1 That to the best of our knowledge and belief all rates assessed before the date hereof in respect of any of the units or the common property have been paid, at the date of this certificate.
- 2 That notice of the intention to make the attached application was duly served on [*here state name, address, and occupation*], being the lessor under Memorandum of Lease Number (Registry), on the day of 19 .

Dated:

Signed by in the presence of:

Signed:

[*occupation, address*]

³*Consent of administrator*

I [*here state name, address, and occupation*] being duly appointed the administrator of Body Corporate Number by virtue of an order of the High Court of New Zealand made at on the

Form 5—*continued*

 day of 19 hereby consent to the attached
application.

Dated:

Signed by in the presence of:

Signed:

[*occupation, address*]

Notes

¹Where there is no Committee the Certificate should be included in the main body of the application and signed by all the proprietors.

²Omit where not applicable.

³Omit if no administrator has been appointed.

Form 6

s 47(2)

Application to cancel a unit plan pursuant to a
Court order

I (or We) [*here state name, address, and occupation*] hereby apply to have Unit Plan Number (Registry) cancelled on the following grounds:

- 1 That on the day of 19 I (or we) applied to the High Court of New Zealand at for an order that the said Unit Plan Number (Registry) be cancelled.
- 2 That on the day of 19 the said Court duly ordered that the said Unit Plan be cancelled, as is evidenced by the copy of the order of the said Court hereunto annexed and marked "A".
- 3 That notice of my (or our) intention to make this application was duly served on [*here state name, address, and occupation*], being the lessor under Memorandum of Lease Number on the day of 19 .

Dated:

Signed by the above-named as applicant(s) in the presence of:

Signed:

[*occupation, address*]²*Certificate as to debts*

We, the undersigned, being the members of the Committee and the secretary of the Body Corporate Number hereby certify that to the best of our knowledge and belief all rates assessed before the date hereof in respect of any of the units or common property have been paid.

Dated:

Signed by the above-named in the presence of:

Form 6—*continued*

Signed:
[*occupation, address*]

³*Consent of administrator*

I [*here state name, address, and occupation*] being duly appointed the administrator of Body Corporate Number _____ by virtue of an order of the [High Court] of New Zealand made at _____ on the _____ day of _____ 19 _____ hereby consent to the attached application. Signed by the above named _____ in the presence of:

Dated:

Signed by the above-named _____ in the presence of:

Signed:
[*occupation, address*]

Notes

¹Omit where not applicable.

²Where there is no Committee the Certificate should be given by all the proprietors of the units. Where the Court has ordered that this certificate may be dispensed with a certificate to that effect should be given.

³Omit if no administrator has been appointed, or if his consent has been dispensed with by the Court, or if he is one of the applicants to the Court.

Form 7

s 60(3)

Caveat forbidding the deposit of a unit plan by
a company or group of owners**To** The District Land Registrar of the District of

Take notice that I, _____ of _____ being the registered proprietor of (*or claiming an estate or interest as*) [*here state the nature of the estate or interest claimed, and the ground on which the claim is founded*] in the land described as [*here state particulars of description from notice hereinafter mentioned*] (*or in the shares numbered from _____ to _____ in _____, being the registered proprietor of that piece of land in respect of which the company proposes to deposit a unit plan*) in notice dated the _____ day of _____ 19____, advertising the intention of the applicant to deposit a unit plan under the provisions of the Unit Titles Act 1972 in respect of the above described piece of land, hereby forbid the deposit of a unit plan in respect of the said land under the provisions of the said Act.

And I appoint _____ as the place at which notices relating hereto may be served on me.

Dated:

Signed by the above-named _____ in the presence of:

Signed:

[*occupation, address*]

The references to the High Court were substituted, as from 1 April 1980, for references to the Supreme Court pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Schedule 2

s 37

**Rules that may be amended by unanimous
resolution**

Duties of proprietor

- 1 A proprietor shall—
- (a) permit the body corporate (or its agents or servants) at all reasonable hours to enter into and upon his unit for any of the following purposes, that is to say,—
 - (i) viewing the condition thereof;
 - (ii) maintaining, repairing, or renewing any pipes, conduits, wires, cables, or ducts for the time being in, upon, or passing through his unit and capable of being used in connection with the enjoyment of any other unit or common property;
 - (iii) maintaining, repairing, or renewing any common property; and
 - (iv) ensuring that the rules are being observed:
 - (b) comply in all respects with all Acts, bylaws, and regulations for the time being in force in the area in which his unit is situated in so far as they relate to the use, occupation, or enjoyment of his unit:
 - (c) forthwith and at all times carry out all work that may be ordered by any competent local authority or public body in respect of his unit to the satisfaction of that authority or body:
 - (d) duly and punctually pay all rates, taxes, charges, and other outgoings from time to time payable in respect of his unit to any local authority or public body and all sums properly levied in respect of his unit by the body corporate:
 - (e) repair and maintain his unit, and keep it in sufficiently good order, repair, and condition to ensure that no damage or harm shall ensue to the common property or any other unit in the building of which his unit forms part:
 - (f) make no additions or structural alterations to the unit without the consent of the body corporate.

Powers and duties of Body Corporate

- 2 The body corporate shall—
- (a) repair and maintain all chattels, fixtures, and fittings (including stairs, lifts, elevators, and fire escapes) used, or intended, adapted, or designed for use, in connection with the common property or the enjoyment thereof:
 - (b) repair and maintain all pipes, wires, cables, ducts, and all other apparatus and equipment of whatsoever kind and wheresoever situate which may be reasonably necessary for the enjoyment of an incidental right which may from time to time exist by virtue of section 11 of the Unit Titles Act 1972:
 - (c) on request, produce to any unit proprietor, or a registered mortgagee of any unit, or any person authorised in writing by any unit proprietor or registered mortgagee of any unit, all policies of insurance effected by the body corporate under the provisions of section 15 of the Unit Titles Act 1972 and the receipt for the last premiums paid in respect thereof.
- 3 The body corporate may—
- (a) borrow any money necessary to enable it adequately to perform its duties or exercise its powers:
 - (b) invest any money for the time being held by it (whether in a fund established under section 15 of the Unit Titles Act 1972 or otherwise) in any of the modes of investment for the time being authorised by law for the investment of trust funds:
 - (c) establish a current account at a bank, and nominate for the purposes of this paragraph 3 persons (including the secretary) of whom any 2 may operate the account:
 - (d) enter into any agreement with a proprietor or an occupier of any unit for the provision of amenities or services by it to the unit or to the proprietor or occupier:
 - (e) grant to a proprietor of a unit or to anyone claiming through him any special privilege (not being a lease) in

respect of the enjoyment of part or parts of the common property:
provided that any such grant shall be determinable by special resolution.

Committee of a body corporate

- 4 Where there are more than 3 proprietors, the powers and duties of the body corporate shall be exercised and performed by a committee, subject to any restriction imposed or direction given at a general meeting of the body corporate:
provided that any expenditure of over \$100, not being expenditure which the body corporate is legally obliged or previously authorised to incur, shall be referred to a general meeting; and if the share of the proprietor or proprietors of any principal unit in any expenditure that is referred to a general meeting exceeds \$30, that expenditure shall not be incurred unless it is approved by at least a three-fourths majority of votes.
- 5 Until the first annual general meeting of the body corporate, the proprietors of all the units shall constitute the committee. Thereafter the committee shall consist of such number of proprietors, not being fewer than 3, as is fixed from time to time by the body corporate at an annual general meeting.
- 6 The members of the committee shall be elected at each annual general meeting, to hold office until the next annual general meeting:
provided that, unless the committee consists of all the proprietors, the body corporate may by resolution at an extraordinary general meeting remove any member of the committee before the expiration of his term of office and appoint another proprietor in his place to hold office until the next annual general meeting.
- 7 Any casual vacancy on the committee may be filled by the remaining members of the committee.

-
- 8 The quorum necessary for the transaction of the business of the committee may be fixed by the committee; and, unless so fixed, shall be 2 if there are not more than 6 members and 3 otherwise.
- 9 If the number of committee members is reduced below the number which would constitute a quorum, the remaining members may act for the purpose of increasing the number of members to that number or of summoning a general meeting of the body corporate, but for no other purpose.
- 10 At meetings of the committee all matters shall be determined by a simple majority of votes. In the case of equality of votes the chairman for the time being of the meeting shall have a casting vote as well as a deliberative vote.
- 11 Subject to any restriction imposed or direction given at a general meeting, the committee may—
- (a) meet for the conduct of business, adjourn, and otherwise regulate its meetings as it thinks fit:
provided that it shall meet when any member of the committee gives to the other members not less than 7 days' notice of a meeting proposed by him, specifying the reason for calling the meeting:
 - (b) employ for and on behalf of the body corporate such agents and servants as it thinks fit in connection with the control, management, and administration of the common property and the exercise and performance of the powers and duties of the body corporate:
 - (c) from time to time elect one of its members to act as convener of the committee:
 - (d) delegate to 1 or more of its members such of its powers and duties as it thinks fit, and at any time revoke the delegation:
 - (e) whenever it thinks fit, convene an extraordinary general meeting of the body corporate.
- 12 The committee shall—

- (a) keep minutes of its proceedings:
 - (b) cause minutes to be kept of general meetings of the body corporate, and include therein a record of all unanimous resolutions:
 - (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 all such income and expenditure is received or incurred:
 - (d) prepare proper accounts relating to all money of the body corporate, and the income and expenditure thereof, and arrange for the accounts of the body corporate for each year to be duly audited by an independent auditor, for a copy of the duly audited annual accounts to be sent to each proprietor before each annual general meeting of the body corporate, and for the duly audited annual accounts to be presented to each annual general meeting of the body corporate:
 - (e) on application by a proprietor or a mortgagee of a unit, or any person authorised in writing by either of them, make the books of account and all minutes available for inspection at all reasonable times:
 - (f) upon a requisition in writing made by proprietors entitled to 25% of the total unit entitlement of the units, convene an extraordinary general meeting of the body corporate.
- 13 Except as provided in clause 9 of these rules, no act or proceeding of the committee or of any person acting as a member of the committee shall be invalidated in consequence of there being a vacancy in the number of the committee at the time of that act or proceeding, or of the subsequent discovery that there was some defect in the election or appointment of any person so acting, or that he was incapable of being or had ceased to be such a member.

General meetings of a body corporate

- 14 A general meeting of the body corporate, to be called the annual general meeting, shall, in addition to any other meeting, be held at least once in every calendar year and not more than

15 months after the holding of the last preceding annual general meeting. The first annual general meeting of the body corporate shall be held within 3 months after the date of the deposit of the unit plan or of the first sale of a unit, whichever is the later.

- 15 All general meetings of the body corporate other than annual general meetings shall be called extraordinary general meetings.
- 16 At least 7 days' notice of every general meeting of the body corporate specifying the place, the date, and the hour of the meeting, and the proposed agenda shall be given to all persons entitled to exercise a vote in accordance with the provisions of section 41 of the Unit Titles Act 1972 and of clause 23 of these rules:
provided that accidental omission to give such notice to anyone so entitled shall not invalidate any proceedings at any such meeting.
- 17 Any notice required to be given under clause 16 of these rules shall be sufficiently given if delivered personally to the person concerned or if left, or sent by letter posted to the person concerned, at the last address of that person notified to the body corporate, or if no such address has been so notified at that person's last known place of residence:
provided that, if a proprietor advises the body corporate in writing that he requires notices sent to him by post to be sent by registered post, a notice thereafter sent to him by post shall not be sufficiently given unless it is sent by registered post.
- 18 At a general meeting of the body corporate, the persons entitled, on an ordinary resolution, to exercise the voting power in respect of not less than one-third of the units shall constitute a quorum.

- 19 Save as otherwise provided in these rules, no business shall be transacted at any general meeting of the body corporate unless a quorum is present at the time.
- 20 If within half an hour from the time appointed for a general meeting of the body corporate 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 from the time appointed for the meeting the number of persons present and entitled to vote at the expiration of that half hour shall constitute a quorum.
- 21 At a general meeting of the body corporate, the chairman shall normally be the convener of the committee if he is present. If there is no convener or if the convener is not present or is unwilling to act, a chairman shall be elected at the commencement of the meeting.
- 22 Save as otherwise provided by the Unit Titles Act 1972 or these rules, all matters at a general meeting of the body corporate shall be determined by a simple majority of votes. In the case of equality of votes the chairman for the time being of the meeting shall have a casting vote as well as a deliberative vote.
- 23 Subject to the provisions of section 41 of the Unit Titles Act 1972, at any general meeting of the body corporate—
- (a) where a unanimous resolution is required each person who is a proprietor shall be entitled to exercise 1 vote:
 - (b) in all other cases 1 vote only shall be exercised in respect of each principal unit, and no separate vote may be exercised in respect of any accessory unit.
- 24 At any meeting of the body corporate any person present and entitled to vote on the matter that is under consideration may demand a poll thereon, which shall be taken in such manner as the chairman thinks fit.

- 25 The result of the poll shall be deemed to be the resolution of the meeting at which it was demanded. Where a poll is not demanded, a declaration by the chairman that a resolution has been carried shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded for or against the resolution.
- 26 Any vote to be cast at a general meeting of the body corporate may be exercised personally or by proxy. Where 2 or more persons are jointly entitled to exercise 1 vote and wish to do so by proxy, that proxy shall be jointly appointed by them and may be one of them. A proxy shall be appointed in writing. If only 1 of those persons is present at a general meeting and they have not appointed a proxy as aforesaid, he or she may exercise the vote.
- 27 Where a poll is demanded or a special resolution is before the meeting, each vote shall correspond in value with the unit entitlement of the principal unit and accessory unit (if any) in respect of which it is exercised. In all other cases each vote shall be of equal value.
- 28 Except where a unanimous resolution is required, a power of voting in respect of a unit shall not be exercised unless all amounts accrued due and payable under the Unit Titles Act 1972 to the body corporate in respect of the unit in respect of which the vote is exercisable have been duly paid.
- 29 If there is no committee, the responsibility for the matters set out in clause 12 of these rules except paragraph (a), and the powers given to the committee by clause 11 of these rules except paragraph (a), shall be those of the body corporate; and, unless the context otherwise requires, every reference in these rules to the committee shall be read as a reference to the body corporate.
- 30 A secretary (who may or may not be a proprietor) shall be appointed by the body corporate at its first annual general meet-

ing for such term, at such remuneration, and upon such conditions as it may approve; and any secretary so appointed may be removed by the body corporate, either at a subsequent annual general meeting or at an extraordinary general meeting called for that purpose. At any such meeting the secretary shall have the right to attend and be heard.

Clause 30 was amended, as from 2 November 1979, by section 27(1) Unit Titles Amendment Act 1979 (1979 No 37) by substituting the words “(who may or may not be a proprietor)” for the words “(who shall not be a proprietor)”.

31 The function of the secretary shall be to keep proper books of account in which shall be kept full, true, and complete accounts of the affairs and transactions of the body corporate and to carry out such other functions as may from time to time be delegated to him by the body corporate.

31A The secretary shall in each year prepare a statement of financial position showing the body corporate’s financial dealings during that year, and shall, within 6 months after each annual general meeting, send a copy of the latest balance sheet to every proprietor.

Clause 31A was inserted, as from 2 November 1979, by section 27(2) Unit Titles Amendment Act 1979 (1979 No 37).

The words “statement of financial position” were substituted, as from 1 October 1997, for the words “balance sheet” pursuant to 6(1) Financial Reporting Amendment Act 1997 (1997 No 17).

Miscellaneous

32 The common seal of the body corporate shall not be used without the authority of the committee of the body corporate previously given. Whenever the seal is affixed to any instrument, that instrument shall be attested by at least 2 members of the committee or, where an administrator has been appointed or there is only 1 proprietor, by the administrator or that proprietor.

33 For the purposes of these rules a special resolution means a resolution proposed at a general meeting of the body corporate

of which at least 14 days' notice specifying the intention to propose the resolution as a special resolution has been given.

- 34 Where a resolution is proposed as a special resolution, the vote of the meeting shall be taken in the same way as if it had been proposed as an ordinary resolution and a poll had been demanded:

provided that a special resolution shall be deemed not to be carried unless persons entitled to exercise not less than three-fourths of the value of the votes and not less than three-fourths of the number of votes exercisable in respect of all the units vote in favour of it.

Schedule 3

s 37

**Rules that may be amended by resolution
of body corporate**

A proprietor or occupier of any unit shall not—

- (a) use or permit his unit to be used for any purpose which is illegal or may be injurious to the reputation of the building:
 - (b) make undue noise in or about any unit or common property:
 - (c) keep any animal on his unit or the common property without the prior consent of the committee of the body corporate, or, if there is no committee, of the body corporate:
 - (d) use the common property in such a manner as unreasonably to interfere with the use and enjoyment thereof by other proprietors and their families and visitors:
 - (e) use his unit or permit it to be used in such manner or for such purpose as to cause a nuisance or disturbance to any occupier of any unit (whether a proprietor or not) or the family of any such proprietor.
-

Schedule 4

s 5(1)(g)

Chief executive's certificate for unit plan

Schedule 4 was inserted, as from 2 November 1979, by section 28 Unit Titles Amendment Act 1979 (1979 No 37).

Schedule 4 was amended, as from 20 January 1981, pursuant to section 2(2) Local Government Amendment Act 1980 (1980 No 82) by substituting the words "principal administrative officer" for the words "principal officer".

Schedule 4 heading was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "Chief executive's" for the words "Principal administrative officer's" in both places where they appear. *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Schedule 4 was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "chief executive" for the words "principal administrative officer" in both places where they appear. *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Pursuant to section 5(1)(g) of the Unit Titles Act 1972, I, _____, the chief executive of the _____ territorial authority, hereby certify that every building shown on unit plan number _____ has been erected, and all other development work has been carried out, to the extent necessary to enable all the boundaries of every unit and the common property shown on the plan to be physically measured.

*I further certify that the said plan is consistent with proposed unit development plan number _____.

Chief executive

*To be included only where the certificate is given in respect of a stage unit plan under Part 1 of the Unit Titles Amendment Act 1979.

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Notes

1 General

This is an eprint of the Unit Titles Act 1972. The eprint incorporates all the amendments to the Act as at 1 October 2012. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about eprints and officialisation, please *see* <http://www.pco.parliament.govt.nz/eprints/>.

3 List of amendments incorporated in this eprint (most recent first)

Unit Titles Act 2010 (2010 No 22): section 218

Property Law Act 2007 (2007 No 91): section 364(1)
