

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. of 2020.

Strata Title (Management) Bill 2020.

ARRANGEMENT OF SECTIONS.

PART 1 – PRELIMINARY	6
Section 1 – Name of Act	6
Section 2 – Dictionary	6
Section 3 – Notes	6
Section 4 – Offences against Act (application of Criminal Code etc)	6
Section 5 – Objects of Act	6
PART 2 – MANAGEMENT OF STRATA PLANS	6
DIVISION 1 WHO MANAGES A STRATA PLAN?	6
Section 6 – Owners’ corporation	6
DIVISION 2 OWNERS’ CORPORATION (GENERAL)	7
Section 7 – Owners’ corporation (establishment)	7
Section 8 – Owners’ corporation (legal status)	7
DIVISION 3 OWNERS’ CORPORATION (MEMBERSHIP AND REPRESENTATIVES). ..	7
Section 9 – Members of owners’ corporation	7
Section 10 – Part-owners of units (authorisation of representatives)	7
Section 11 – Part-owners of units (functions of representatives)	8
Section 12 – Company-owned units (authorisation of representatives)	8
Section 13 – Company owned units (functions of representative)	8
Section 14 – Evidence of representative status	9
PART 3 – FUNCTIONS OF OWNERS’ CORPORATIONS	9
DIVISION 4 FUNCTIONS GENERALLY	9
Section 15 – Owners’ corporation (functions)	9
Section 16 – Owners’ corporation (general meetings)	9
Section 17 – Exemptions for strata plans with 4 or fewer units	9
DIVISION 5 FUNCTIONS RELATING TO PROPERTY	9
Section 18 – Common property	9
Section 19 – Dealings with common property	9
Section 20 – Dealing in property generally	10
Section 21 – Special privileges relating to common property	10
Section 22 – Installation of sustainability and utility infrastructure on common property .	10
DIVISION 6 MAINTENANCE AND OTHER SERVICES	11
Section 23 – Maintenance obligations	11
Section 24 – Owners’ corporation may exempt itself from maintenance obligations	11

Section 25 – Other qualifications on owners’ corporation’s maintenance obligations	11
Section 26 – Structural defects (owners’ corporation may represent members)	12
Section 27 – Owners’ corporation (entry to units)	12
Section 28 – Work on behalf of particular unit owners’ or occupiers.....	12
Section 29 – Recovery of costs (agreements under s28)	13
Section 30 – Recovery of expenditure resulting from member or unit occupier's fault	13
DIVISION 7 OTHER MATTERS.....	13
Section 31 – Animals (owners’ corporation consent)	13
PART 4 – PEOPLE HELPING THE OWNERS’ CORPORATION EXERCISE ITS	
FUNCTIONS.....	14
DIVISION 8 EXECUTIVE COMMITTEES	14
Section 32 – Executive committee (establishment)	14
Section 33 – Executive committee (functions)	14
Section 34 – Executive committee (what it must, may and cannot do).....	14
Section 35 – Executive committee (meetings).....	14
Section 36 – Executive committee (before the first annual general meeting	14
Section 37 – Executive committee (at and from the first annual general meeting.....	14
Section 38 – Executive committee (office-holders)	15
Section 39 – Executive committee (chairperson’s functions).....	15
Section 40 – Executive committee (secretary’s functions).....	15
Section 41 – Executive committee (treasurer’s functions)	16
Section 42 – Executive committee (delegation).....	16
Section 43 – Executive committee (contractors and employees).....	16
Section 44 – Executive committee (code of conduct)	17
Section 45 – Executive members (protection from liability)	17
Section 46 – Executive committee (validity of acts).....	17
DIVISION 9 MANAGERS	17
Section 47 – Definitions	17
Section 48 – Manager (contract)	17
Section 49 – Manager not to be contracted for longer than 3 years	18
Section 50 - Manager (functions).....	18
Section 51 – Manager (transfer).....	18
Section 52 – Manager (ending contract).....	18
Section 53 – Manager (remedial breaches).....	19
Section 54 – Manager (code of conduct).....	20
Section 55 – Manager (public liability insurance)	20
Section 56 – Manager (delegated functions).....	20
DIVISION 10 SERVICE CONTRACTORS	20
Section 57 – Definitions	20
Section 58 – Service contractor (contract).....	20
Section 59 – Service contractor not to be contracted for longer than 25 years.....	21
Section 60 – Service contractor (functions).....	21
Section 61 – Service contractor (transfer)	21
Section 62 – Service contractor (ending contract)	21
Section 63 – Service contractor (remedial breaches)	22
DIVISION 11 COMMUNICATION OFFICERS	22

Section 64 – Communications officer (appointment)	22
Section 65 – Communications officer (function)	23
PART 5 – FINANCIAL MANAGEMENT	23
DIVISION 12 FINANCIAL FUNCTIONS GENERALLY	23
Section 66 – Owners’ corporation must have a bank account	23
Section 67 – Owners’ corporation may invest	23
Section 68 – Owners’ corporation may borrow	23
Section 69 – Owners’ corporation must not carry on business	24
DIVISION 13 ADMINISTRATIVE, SPECIAL PURPOSE AND SINKING FUNDS	24
Section 70 - Administrative fund	24
Section 71 – Special purpose fund	24
Section 72 – General fund (budget).....	24
Section 73 – General fund (what must be paid into the fund)	25
Section 74 – General fund (what can the fund be used for)?.....	25
Section 75 – General fund (contributions).....	25
Section 76 – General fund (notice of contributions)	25
Section 77 – General fund (when are contributions payable?)	26
Section 78 – Sinking fund.....	26
Section 79 – Sinking fund plan	26
Section 80 – Sinking fund plan (meaning of expected sinking fund)	27
Section 81 – Sinking fund plan (when must it be approved?)	27
Section 82 - Sinking fund plan (review).....	27
Section 83 – Sinking fund plan (amendment).....	27
Section 84 – Sinking fund (what must be paid into the fund?).....	28
Section 85 – Sinking fund (what can it be used for?).....	28
Section 86 – Sinking fund (contributions).....	28
Section 87 – Sinking fund (notice of contributions)	28
Section 88 – Sinking fund (when are contributions payable?)	29
Section 89 – General and sinking funds in staged developments	29
DIVISION 14 POWERS IN RELATION TO MONEY OWING TO OWNERS’ CORPORATION	29
Section 90 – Discounts (amounts owing)	29
Section 91 – Interest (amounts owing)	29
Section 92 – Recovery of amounts owing	30
Section 93 – Security for unpaid amounts (declaration of charge)	30
Section 94 – Security for unpaid amounts (discharge).....	30
Section 95 – Liability of part-owners	30
DIVISION 15 INSURANCE.....	31
Section 96 – Meaning of building land.....	31
Section 97 – Building insurance by owners’ corporation.....	31
Section 98 – Exemption from building insurance requirements	32
Section 99 – Public liability insurance by owners’ corporation	32
Section 100 – Application of insurance money by owners’ corporation.....	32
Section 101 – Additional insurance (owners’ corporation)	32
Section 102 – Additional insurance (unit owners’).....	32
PART 6 – OWNERS’ CORPORATION RULES	32

Section 103 – What are the rules of an owners’ corporation?	32
Section 104 – Effect of rules	32
Section 105 – Owners’ corporation may amend rules.....	33
Section 106 – Breach of rules (rule infringement notice).....	33
Section 107 – Breach of rules (failure to comply with rules infringement notice)	34
Section 108 – Breach of rules (request for rule infringement notice)	34
Section 109 – Interpretation.....	34
PART 7 – OWNERS’ CORPORATION RECORDS	34
Section 110 – Corporate register (establishment)	34
Section 111 – Corporate register (information to be included).....	34
Section 112 – Corporate register	35
Section 113 – Corporate register (access).....	36
Section 114 – Names and addresses of executive members	36
Section 115 – Insurance information.....	36
Section 116 – Strata title certificate and access to owners’ corporation records	36
Section 117 – Acting on information in strata title certificate	37
Section 118 – Failure to provide information or certificate (offence).....	37
Section 119 – Owners’ corporation name and address.....	37
Section 120 – Service of documents on owners’ corporation.....	37
Section 121 – Service of documents on members, interested people and occupiers	37
PART 8 – DISPUTE RESOLUTION	38
Section 122 – Disputes involving the owners’ corporation (generally)	38
Section 123 – Disputes between unit owners.....	38
PART 9 – PROTECTION OF FINANCIERS FOR SERVICE CONTRACTS	38
Section 124 – Meaning of financed service contract and financier	38
Section 125 – Who is a financier for a service contract?.....	38
Section 126 – Financed service contract (notice of change).....	39
Section 127 – Financed service contract (limitation on ending)	39
Section 128 – Financed service contract (person authorised to act for financier)	39
Section 129 – Financed service contract (agreement between owners’ corporation and financier prohibited)	40
PART 10 – ADMINISTRATORS	40
DIVISION 16 INTERESTED PARTIES	40
Section 130 – Who may apply for an administration order?	40
Section 131 – Supreme Court appearances and service of applications.....	40
DIVISION 17 APPOINTMENT, REMOVAL AND FUNCTIONS	40
Section 132 – Appointment of administrator	40
Section 133 – Removal or replacement of administrator	41
Section 134 – Functions of administrator	41
Section 135 – Delegation by administrator.....	41
PART 11 – MISCELLANEOUS	41
Section 136 – Mortgage insurance of unit	41
Section 137 – Payment under mortgage insurance policies.....	41
Section 138 – Transfer of mortgagee’s interest to insurer	42

SCHEDULE 1 DICTIONARY	43
SCHEDULE 2 GENERAL.....	46
PART 1 - GENERAL MEETINGS	46
1.1 - Conduct of general meetings.....	46
1.2 - Annual general meetings	46
1.3 - First annual general meeting	46
1.4 - First annual general meeting – developer to deliver records	46
1.5 - General meetings other than annual general meetings	46
1.6 - Notice of general meetings	47
1.7 - Requirements for notice of general meetings	47
1.8 - Defective notice of meetings.....	47
1.9 - Quorum at a general meeting – owners’ corporation with 3 or more members	48
1.10 - Notice of reduced quorum decisions and adjournments	48
1.11 - Quorum at a general meeting – owners’ corporation with 2 members	49
1.12 - Chairperson at a general meeting	49
PART 2 - RESOLUTIONS AT GENERAL MEETINGS	49
1.13 - Decision-making at general meetings.....	49
1.14 - Ordinary resolutions	49
1.15 - Special resolutions	50
1.16 - Unopposed resolutions.....	50
1.17 - Unanimous resolutions	50
1.18 Evidence of resolutions of owners’ corporation.....	50
PART 3 - VOTING AT GENERAL MEETINGS	51
1.19 - Who is entitled to vote?	51
1.20 - General meeting – decisions about staged development	51
1.21 - One vote – 1 unit	51
1.22 - Voting by mortgagees.....	51
SCHEDULE 3 DEFAULT RULES	55
R1 Definitions – Default Rules	55
R2 Payment of rates and taxes by unit owners	55
R4 Erections and alterations	55
R5 Use of common property.....	55
R6 Hazardous use of unit.....	55
R7 Use of unit – nuisance or annoyance	55
R8 Noise	56
R9 Illegal use of unit	56
R10 What may an executive committee representative do?	56
R11 Seal of owners’ corporation.....	56

INDEPENDENT STATE OF PAPUA NEW GUINEA.



An Act.

Strata Title (Management) Bill 2020,

Being an Act to unify the law relating to the management of strata titles and unit plans, and for related purposes.

PART 1 – PRELIMINARY

Section 1 – Name of Act

This Act is the Strata Title (Management) Act 2020.

Section 2 – Dictionary

The dictionary at the end of this Act is part of this Act.

Section 3 – Notes

A note included in this Act is explanatory and is not part of this Act.

Section 4 – Offences against Act (application of Criminal Code etc)

Other legislation applies in relation to offences against this Act.

Section 5 – Objects of Act

The objects of this Act are to –

- (a) Make it clear who is responsible for managing strata plans; and
- (b) Help people who manage, or help in the management of strata plans, understand and exercise their functions; and
- (c) Assist in the resolution of disputes in relation to the management of strata plans; and
- (d) Make the law about the management of strata plans easier to use generally.

PART 2 – MANAGEMENT OF STRATA PLANS

DIVISION 1 WHO MANAGES A STRATA PLAN?

Section 6 – Owners’ corporation

The owners’ corporation for a strata plan is responsible for managing the strata plan.

Note: An owners’ corporation may be helped by one or more of the following:

- (a) The executive committee of the owners’ corporation;
- (b) A manager engaged under s47;
- (c) A service contractor engaged under s 58.

DIVISION 2 OWNERS' CORPORATION (GENERAL)

Section 7 – Owners' corporation (establishment)

- (1) On the registration of a strata plan, an owners' corporation for the strata plan is established under the name 'The Owners' – Strata Plan No X'.
- (2) In this section X means the number given to the strata plan by the Registrar of Titles on its registration.

Section 8 – Owners' corporation (legal status)

- (1) An owners' corporation is a corporation.
- (2) An owners' corporation –
 - (a) Has perpetual succession; and
 - (b) Must have a common seal; and
 - (c) May sue and be sued in its corporate name.

DIVISION 3 OWNERS' CORPORATION (MEMBERSHIP AND REPRESENTATIVES)

Section 9 – Members of owners' corporation

- (1) The members of an owners' corporation for a strata plan are the owners of the units.
- (2) If a unit is owned by 2 or more part-owners, each part-owner is a member of the owners' corporation.

Section 10 – Part-owners of units (authorisation of representatives)

- (1) This section applies if a unit is owned by 2 or more part-owners.
- (2) The part-owners of the unit must, by written notice to the owners' corporation, authorise an individual to represent them as their agent (the part-owners' representative) for this Act.
- (3) The part-owners' representative must be one of the owners.

Note: If a company is a part-owner of the unit, the company's own representative may also be authorised as the part-owners' representative.

- (4) The notice of authorisation –
 - (a) Be given to the owners' corporation within 14 days after the lodgement for registration of the instrument under which the unit first becomes owned by the part-owners; and
 - (b) Include the full name and an address for correspondence of the representative; and
 - (c) Be signed by each part-owner of the unit.
- (5) The part-owners of the unit may change their representative by written notice to the owners' corporation.
- (6) The notice of change of authorisation must –
 - (a) Include the full name and an address for correspondence of the new representative; and
 - (b) Be signed by each part-owner of the unit.
- (7) The part-owners' representative may change the address for correspondence of the representative by written notice to the owners' corporation.
- (8) The notice of change of address must be signed by the representative.

- (9) This section may be enforced in the same way as a rule of the owners' corporation (see section 103 – Effect of rules)

Section 11 – Part-owners of units (functions of representatives)

- (1) This section applies if a unit is owned by 2 or more part-owners.
- (2) Anything that an owner of the unit may do, or is required to do, under this Act may be done by the part-owners' representative acting as the agent for the part-owners.
- (3) Any document, including a notice, that this Act requires the owners' corporation or someone else to give to the part-owners may be given to the representative alone on their behalf under section 120 (Service of documents on members, interested people and occupiers).
- (4) If a document is given to the part-owners by being given to the representative on their behalf, the representative must tell the other part-owners that the document has been given to the representative and (if asked) give them a copy of the document.
- (5) Subsection (4) may be enforced in the same way as a rule of the owners' corporation (see section 103 - Effect of rules).

Section 12 – Company-owned units (authorisation of representatives)

- (1) This section applies if a company is the owner of a unit.

Note In this section owner includes a part-owner.

- (2) The company must, by written notice to the owners' corporation, authorise an individual to represent it as its agent (the company's representative) for this Act.
- (3) The company's representative must be an officer or employee of the company.
- (4) The notice of authorisation must –
 - (a) Be given to the owners' corporation within 14 days after the lodgement for registration of the instrument under which the company becomes an owner of the unit; and
 - (b) Include the full name and an address for correspondence of the representative; and
 - (c) Be signed by the company.
- (5) The company may change its representative by written notice to the owners' corporation.
- (6) The notice of change of authorisation must –
 - (a) Include the full name and an address for correspondence of the new representative; and
 - (b) Be signed on behalf of the company.
- (7) The company's representative may change the address for correspondence of the representative by written notice to the owners' corporation.
- (8) The notice of change of address must be signed by the representative.
- (9) This section may be enforced in the same way as a rule of the owners' corporation (see section 103 – Effect of rules).

Section 13 – Company owned units (functions of representative)

- (1) This section applies if a company is the owner of a unit.
- (2) Anything that the company may do, or is required to do, under this Act may be done by the company's representative acting as the agent for the company.

- (3) Any document, including a notice, that this Act requires the owners' corporation or someone else to give to the company may be given to the representative on its behalf under section 120 (Service of document on members, interested people and occupiers).

Section 14 – Evidence of representative status

Evidence of any of the following facts about a part-owner's representative or a company's representative may be given by a certificate sealed with the owners' corporation's seal:

- (a) the fact that the authorisation of a named representative was in force on a stated date; and
- (b) the fact that the authorisation of a named representative was in force on a stated date.

PART 3 – FUNCTIONS OF OWNERS' CORPORATIONS

DIVISION 4 FUNCTIONS GENERALLY

Section 15 – Owners' corporation (functions)

- (1) an owners' corporation for a unit's plan has the following functions:
 - (a) the enforcement of its rules;
 - (b) the control, management and administration of the common property;
 - (c) any other function given to the corporation under this Act or another State law.
- (2) The owners' corporation must comply with all applicable laws in force in the independent State of Papua New Guinea.

Section 16 – Owners' corporation (general meetings)

Schedule 3 applies to general meetings of an owners' corporation for a strata plan.

Section 17 – Exemptions for strata plans with 4 or fewer units

- (1) An owners' corporation for a strata plan with 4 or fewer units may, by special resolution, exempt itself from the requirements of this Act.
- (2) An exemption may be revoked by special resolution.

DIVISION 5 FUNCTIONS RELATING TO PROPERTY

Section 18 – Common property

- (1) An owners' corporation for a strata plan holds the common property as agent for –
 - (a) If all the units are owned by the same person—the owner; or
 - (b) In any other case—the unit owners' as tenants in common in shares proportional to their unit entitlement.
- (2) The owners' corporation must give all members of the corporation opportunity for the reasonable use and enjoyment of the common property.

Section 19 – Dealings with common property

- (1) An owners' corporation for a strata plan may, if authorised by a special resolution, on conditions and for purposes stated in the resolution –
 - (a) Grant or vary an easement over any part of the common property; or
 - (b) Take or vary an easement granted for the benefit of the common property; or
 - (c) Release an easement granted for the benefit of the common property.
- (2) The owners' corporation may not transfer, sublet or mortgage, at law or in equity, its interest in the common property.

Section 20 – Dealing in property generally

- (1) An owners' corporation for a strata plan may, if authorised by an ordinary resolution –
 - (a) Hold property for a use in accordance with its functions; or
 - (b) Dispose of that property.
- (2) However, the only interests in land that an owners' corporation may hold, at law or in equity, are as follows:
 - (a) The lease of the common property;
 - (b) An easement granted for the benefit of the common property;
 - (c) A registered charge under section 95 securing an amount payable to the corporation.

Section 21 – Special privileges relating to common property

- (1) An owners' corporation for a strata plan may, if authorised by an unopposed resolution, grant a special privilege, other than a sublease, for the enjoyment of the common property, or any part of the common property, to –
 - (a) A unit owner; or
 - (b) Someone else with an interest in a unit.
- (2) A grant under subsection (1) may be terminated, in accordance with a special resolution, by written notice given by the owners' corporation to the person to whom the grant was made.

Section 22 – Installation of sustainability and utility infrastructure on common property

- (1) An owners' corporation for a strata plan may, if authorised by an ordinary resolution –
 - (a) Approve the installation of sustainability or utility infrastructure on the common property; and
 - (b) Approve the financing of the installation of the sustainability or utility infrastructure; and
 - (c) Grant an easement or any other right over any part of the common property for the purpose of the installation, operation or maintenance of the sustainability or utility infrastructure.
- (2) The owners' corporation may only approve the installation, and financing, of sustainability or utility infrastructure under this section if satisfied, after considering the following, the long-term benefit of the proposed infrastructure is greater than the cost of installing and maintaining the infrastructure:
 - (a) A site plan of the proposed infrastructure;
 - (b) A maintenance plan for the proposed infrastructure;
 - (c) If the proposed infrastructure is to be financed by a third party – the terms of the financing arrangements;
 - (d) The direct and indirect costs of the proposed infrastructure;
 - (e) The long-term environmental sustainability benefits of the proposed infrastructure.
- (3) The owners' corporation may, by ordinary resolution, decide to hold sustainability infrastructure (including existing sustainability infrastructure) installed on common property and any income earned from the operation of the infrastructure as trustee for –
 - (a) If all the units are owned by the same person – the owner; or
 - (b) In any other case – the unit owners' as tenants in common in shares proportional to their unit entitlement.
- (4) For section 71, an owners' corporation is not carrying on a business if it receives income from the operation of the sustainability infrastructure and the income is used only to pay –

- (a) Costs, including financing costs, in relation to the installation and maintenance of the infrastructure; or
- (b) Costs of utilities used by, or provided to the owners' corporation.

DIVISION 6 MAINTENANCE AND OTHER SERVICES

Section 23 – Maintenance obligations

- (1) An owners' corporation for a units plan must maintain the following:
 - (a) For a staged development—the common property included in a completed stage of the development;
 - (b) For a development that is not a staged development—the common property;
 - (c) Other property that it holds;
 - (d) The defined parts of any building containing class A units (whether or not the defined parts are common property);

Note This does not include painting, unless the painting is required because of other maintenance.

- (e) If a utility service mentioned in the Strata Titles Act 2020 section 41 (Easements given by this Act) is provided for the potential benefit of all units—facilities associated with the provision of the utility services including utility conduits;
 - (f) Any building on the common property that encroaches on a unit if the building is the subject of an easement declared under the Strata Title Act 2020 section 42 (Easements declared by owners' corporations);
 - (g) As authorised by a special resolution (if any)—all buildings on all class B units on the strata plan.
- (2) In this section “defined parts”, of a building containing class A units, means –
 - (a) The following structures in the building, if load-bearing:
 - i) Walls;
 - ii) Columns;
 - iii) Footings;
 - iv) Slabs;
 - v) Beams; or
 - (b) Any part of a balcony on the building.

Section 24 – Owners' corporation may exempt itself from maintenance obligations

An owners' corporation for a unit's plan may, by special resolution, exempt itself from 1 or more maintenance obligations under section 23 (1) if the exemption is not reasonably likely to have a significant adverse effect on—

- (a) The appearance of the common property; or
- (b) The safety of occupiers of the units or of the public.

Section 25 – Other qualifications on owners' corporation's maintenance obligations

- (1) An owners' corporation's obligation under section 24 (1) (d) to maintain the defined parts of a building containing class A units does not require the corporation to carry out any painting of a unit unless the painting is necessary because of other maintenance being carried out by the owners' corporation.
- (2) In this section “defined parts” of a building containing class A units – see section 23 (2).

Section 26 – Structural defects (owners’ corporation may represent members)

- (1) This section applies if a building, or the site of a building, that is part of the units or common property of a units plan, has a structural defect that affects, or is likely to affect, the support or shelter provided by that part of the building or site to another part of the building or site.
- (2) The owners’ corporation for the strata plan may, by ordinary resolution, take legal action for the rectification of the structural defects if—
 - (a) The legal action could be taken by a member of the corporation; and
 - (b) The member does not take the legal action within a reasonable time after the defect becomes known.
- (3) If the owners’ corporation takes legal action under this section—
 - (a) The corporation and not the member who could have taken the action is liable for the costs incurred by the corporation in taking the legal action; and
 - (b) The corporation and not the member may take the benefit of any order for costs in the corporation's favour in the legal action.
- (4) For this section, the owners’ corporation takes legal action if the corporation –
 - (a) Begins a proceeding; or
 - (b) Continues a proceeding.

Section 27 – Owners’ corporation (entry to units)

- (1) An owners’ corporation for a strata plan does not have a right to enter a unit in the units plan without the consent of the owner or occupier, except in accordance with this section.
- (2) The owners’ corporation may enter the unit without notice to the owner or occupier of the unit if the access is required in an emergency.

Example – emergency

Water is flowing from 1 unit into another unit and is causing damage

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears.

- (3) If entry to the unit is required to inspect or maintain the common property of the units plan, a person may enter the unit on behalf of the owners’ corporation if—
 - (a) The executive committee authorises the entry, and the person to enter, by resolution; and
 - (b) The executive committee gives the owner or occupier written notice that the entry must be allowed on a stated day.
 - (c) A notice under subsection (3) (b) must be given to the owner or occupier not less than 7 days before the entry it relates to.

Section 28 – Work on behalf of particular unit owners’ or occupiers

An owners’ corporation for a strata plan may, if authorised by an ordinary resolution, enter into and carry out an agreement with an owner or occupier of a unit for—

- (a) The maintenance of the unit; or
- (b) The provision of facilities or services for the unit (or its owner or occupier).

Section 29 – Recovery of costs (agreements under s28)

- (1) This section applies to an agreement for the maintenance of a unit, or the provision of facilities or services for a unit (or its owner or occupier), if—
 - (a) The agreement is authorised under section 28; and
 - (b) The owners' corporation is not responsible for the maintenance, facilities or services under section 23.
- (2) The owners' corporation may recover the cost of carrying out the agreement as a debt from the person with whom the agreement was entered.
- (3) If the agreement applies to a number of units, the amount recoverable for each unit is (unless the people with whom the agreement was entered agree in writing otherwise) as follows:

$$\text{Amount recoverable} = \text{total cost} \times \frac{\text{unit entitlement of the unit}}{\text{total unit entitlement of relevant units}}$$

- (4) In this section –
 - (a) “total cost” means the total cost of carrying out the agreement.
 - (b) “total unit entitlement of relevant units” means the total unit entitlement of all units that the agreement applies to.

Note Unit entitlement – see the Strata Title Act 2020 section 7.

Section 30 – Recovery of expenditure resulting from member or unit occupier's fault

- (1) This section applies if an owners' corporation has incurred an expense for a strata plan in carrying out its functions, or carried out work, that is necessary because of—
 - (a) a wilful or negligent act or omission of a member of the corporation, or an occupier of the member's unit; or
 - (b) a breach of its rules by a member of the corporation, or an occupier of the member's unit.
- (2) The amount spent or the cost of the work is recoverable by the owners' corporation from the member as a debt.
- (3) If the owners' corporation recovers an amount under subsection (2) from a member for an act, omission or breach of an occupier of the member's unit, the member may recover the amount from the occupier as a debt.
- (4) In this section –
 - (a) “expense” includes a reasonable legal expense reasonably incurred, including a legal expense relating to a proceeding in the Supreme Court.
 - (b) “work” carried out by an owners' corporation, means maintenance or anything else the corporation is authorised to do under this Act.

DIVISION 7 OTHER MATTERS

Section 31 – Animals (owners' corporation consent)

- (1) A unit owner may keep an animal, or allow an animal to be kept, within the unit or the common property only with the consent of the owners' corporation.
- (2) The owners' corporation may give consent under this section with or without conditions
- (3) However, the owners' corporation's consent must not be unreasonably withheld.
- (4) In this section “animal” includes –

- (a) An amphibian; and
- (b) A bird; and
- (c) A fish; and
- (d) A mammal (other than a human being); and
- (e) A reptile.

PART 4 – PEOPLE HELPING THE OWNERS’ CORPORATION EXERCISE ITS FUNCTIONS

DIVISION 8 EXECUTIVE COMMITTEES

Section 32 – Executive committee (establishment)

On the establishment of an owners’ corporation, the executive committee of the corporation is established.

Section 33 – Executive committee (functions)

- (1) The executive committee of an owners’ corporation exercises the functions of the corporation.
- (2) Without limiting subsection (1), the executive committee's functions include the following:
 - (a) Developing matter in relation to –
 - i) The common property; and
 - ii) The strategic affairs of the owners’ corporation;
 - (b) Submitting matters developed under paragraph (a) to the owners’ corporation for consideration;
 - (c) Monitoring the owners’ corporation's financial performance;
 - (d) Approving the annual financial statements and budget for presentation to the owners’ corporation at the corporation's annual general meeting;
 - (e) Supervising the treasurer, secretary, manager (if any) and communications officer (if any);
 - (f) Carrying out the decisions of the owners’ corporation made at general meetings.
- (3) The executive committee must exercise its functions—
 - (a) As the corporation directs by resolution at a general meeting; or
 - (b) In the absence of a resolution—as the committee considers appropriate.

Section 34 – Executive committee (what it must, may and cannot do)

The executive committee must act in accordance with schedule 2, part 2.1.

Section 35 – Executive committee (meetings)

Schedule 2, part 2.2 applies to executive committee meetings.

Section 36 – Executive committee (before the first annual general meeting)

- (1) Until the first annual general meeting of an owners’ corporation, the members of the executive committee are all the members of the corporation.
- (2) Until the first annual general meeting, the executive committee may exercise a function of the owners’ corporation only if authorised to do so by a special resolution

Section 37 – Executive committee (at and from the first annual general meeting)

- (1) This section applies to the executive committee of an owners’ corporation beginning at the corporation's first annual general meeting.

- (2) The number of members of the executive committee (the executive members) is decided as follows:
 - (a) If there are only 1, 2 or 3 members of the owners' corporation—each member of the owners' corporation is an executive member;
 - (b) If there are 4 or more members of the owners' corporation—the members of the corporation must, at a general meeting, decide—
 - i) By ordinary resolution to have 3 to 7 executive members; or
 - ii) By special resolution to have 8 or more executive members.
- (3) If the number of members of the owners' corporation is equal to or falls below the number of executive members as decided by the corporation, all the members of the corporation are executive members (even if not nominated or elected).
- (4) The executive members –
 - (a) Are elected (if necessary) by ordinary resolution at each annual general meeting; and
 - (b) Hold office until the earlier of—
 - i) The next annual general meeting; and
 - ii) The executive member ceasing to be a member of the owners' corporation.
- (5) An executive member (the removed member) of an owners' corporation may be removed by the ordinary resolution that elects another member of the corporation to replace the removed member until the next annual general meeting.
- (6) The executive committee of an owners' corporation may appoint a member of the corporation to fill a casual vacancy on the committee until the next annual general meeting.

Section 38 – Executive committee (office-holders)

- (1) The executive committee must elect –
 - (a) A chairperson; and
 - (b) A secretary; and
 - (c) A treasurer.
- (2) The committee may elect a person to 2 or more positions.

Section 39 – Executive committee (chairperson's functions)

The functions of the chairperson are –

- (a) To chair general meetings of the owners' corporation and meetings of the executive committee; and
- (b) To set the agenda for general meetings and executive meetings, in consultation with the secretary and owners' corporation manager (if any); and
- (c) To talk to the secretary, treasurer and manager (if any) about the exercise of their functions.

Section 40 – Executive committee (secretary's functions)

The functions of the secretary are—

- (a) On behalf of the executive committee—
 - i) To give notice of meetings of the executive committee and general meetings; and
 - ii) To prepare and send out to executive members minutes of executive meetings; and

- iii) To prepare and send out to members of the owners' corporation minutes of general meetings; and
- iv) To keep the records of the owners' corporation, other than the records mentioned in schedule 2, section 2.1(1)(f) (which are financial records); and
- (b) On behalf of the executive committee, and the owners' corporation, to give notices under the Act; and
- (c) On behalf of the owners' corporation—
 - i) To give certificates required under the Act; and
 - ii) To prepare and answer correspondence; and
- (d) To give any other administrative support to the executive committee or owners' corporation.

Section 41 – Executive committee (treasurer's functions)

The functions of the treasurer are—

- (a) On behalf of the owners' corporation, to give to each unit owner notice of—
 - i) A determination of general fund contributions under section 75(1); and
 - ii) A determination of sinking fund contributions under section 84(1); and
- (b) On behalf of the owners' corporation—
 - i) To pay all amounts the corporation receives into the corporation's account in accordance with section 66(1)(b); or
 - ii) If the owners' corporation is exempt from section 66(1)—to receive, acknowledge receipt of, and account for amounts paid to the corporation; and

Note An owners' corporation for a unit's plan with only 2 or 3 units may, by unopposed resolution, exempt itself from s 66(1) (see s 66(2)).

- (c) On behalf of the owners' corporation, to pay amounts the corporation spends out of the corporation's account, in accordance with section 66(1)(c), as authorised by the executive committee; and
- (d) On behalf of the executive committee, to keep the records (the records) mentioned in schedule 2, section 2.1(1)(f); and
- (e) If the owners' corporation requires the records to be audited—to arrange for the records to be audited by a qualified auditor; and
- (f) To give financial reports to meetings of the executive committee to allow the committee to monitor the financial performance of the owners' corporation; and
- (g) To prepare and certify the annual financial statements mentioned in schedule 2, section 2.2(1).

Section 42 – Executive committee (delegation)

- (1) An executive committee may delegate its functions to 1 or more executive members.
- (2) An owners' corporation may, by ordinary resolution, impose conditions or restrictions on its executive committee's powers of delegation.

Section 43 – Executive committee (contractors and employees)

- (1) An executive committee of an owners' corporation may engage or employ people on the terms it considers appropriate to help in the exercise of the corporation's functions.
- (2) However, the executive committee may only engage a person under this section—
 - (a) On a short-term basis; or

- (b) For functions other than those for which a manager or service contractor would usually be engaged to undertake.
- (3) An owners' corporation may, by ordinary resolution, impose conditions or limitations on its executive committee's power to engage or employ people.

Section 44 – Executive committee (code of conduct)

An executive member must comply with the code of conduct set out in schedule 1, part 1.1.

Section 45 – Executive members (protection from liability)

- (1) An executive member is not civilly liable for conduct engaged in honestly and without recklessness—
 - (a) In the exercise of a function under this Act; or
 - (b) In the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to the executive committee attaches instead to the owners' corporation.
- (3) In this section "conduct" means an act or omission to do an act.

Section 46 – Executive committee (validity of acts)

An act done honestly by an executive committee is not invalid only because there was a defect or irregularity in or in relation to the member's election or appointment.

DIVISION 9 MANAGERS

Section 47 – Definitions

In this Division:

- (a) "management contract" means a contract to provide management services to an owners' corporation.
- (b) "management services" means services provided by a manager in exercising the manager's functions.
- (c) "manager" means a person—
 - i) contracted under section 50; or
 - ii) with whom an owners' corporation has a management contract.

Section 48 – Manager (contract)

- (1) An owners' corporation for a strata plan may, by ordinary resolution, enter into a management contract with any of the following:
 - (a) A real estate agent holding current membership under the Real Estate Industry Association;
 - (b) A member of the corporation;
 - (c) Someone else who is not a manager of another owners' corporation, and whose income as manager of the corporation will not be the person's primary source of income.
- (2) The management contract—
 - (a) Must state –
 - i) The remuneration of the manager; and
 - ii) The functions of the owners' corporation that the manager is to exercise; and

- (b) May include other conditions agreed between the owners' corporation and the manager.
- (3) Without limiting subsection (1), an owners' corporation enters into a management contract if the corporation engages a person to carry out management services.

Section 49 – Manager not to be contracted for longer than 3 years

- (1) An owners' corporation must not enter into a management contract with a manager for longer than 3 years (including any period for which the contract may be renewed or extended).
- (2) If an owners' corporation enters into a management contract for longer than 3 years, the contract is taken, for all purposes, to be a contract for 3 years.

Section 50 - Manager (functions)

A manager has –

- (a) The functions stated in the manager's contract; and
- (b) Any other function delegated to the manager under section 56.

Section 51 – Manager (transfer)

- (1) A manager's rights under a management contract may be transferred only if the transfer is approved by the owners' corporation by ordinary resolution.
- (2) In deciding whether to approve the proposed transfer, the owners' corporation may consider the following:
 - (a) The character of the proposed transferee and associates of the proposed transferee;
 - (b) The proposed transferee's financial standing;
 - (c) The terms of the proposed transfer;
 - (d) The competence, qualifications and experience of the proposed transferee and associates of the proposed transferee;
 - (e) Whether the proposed transferee or associates of the proposed transferee have received, or are likely to receive, training in relation to the manager's functions;
 - (f) Anything else relevant to the management contract.
- (3) The owners' corporation must decide whether to approve a proposed transfer not later than 30 days after the day the corporation is asked in writing to approve the transfer.
- (4) However, the owners' corporation must not—
 - (a) Unreasonably withhold the approval to transfer; or
 - (b) Require or receive a fee or other consideration for approving the transfer, other than reimbursement of legal or administrative expenses reasonably incurred by the corporation for the approval.
- (5) If the owners' corporation has not decided whether to approve a proposed transfer within the period mentioned in subsection (3), the corporation is taken to have approved the transfer.
- (6) In this section “associates of the proposed transferee means” –
 - (a) If the proposed transferee is a corporation—the corporation's directors, substantial shareholders and principal staff; or
 - (b) If the proposed transferee is a partnership or is in partnership—the partners and principal staff of the partnership.

Section 52 – Manager (ending contract)

- (1) The owners' corporation may end a management contract—

- (a) For a remedial breach if notice has been given under section 53; or
 - (b) For misbehaviour; or
 - (c) If the manager is an individual—if the individual—
 - i) Becomes bankrupt or personally insolvent; or
 - ii) Is convicted of an offence punishable by imprisonment for at least 1 year.
 - (d) If the manager is a corporation—if the corporation becomes insolvent.
- (2) However, before ending a management contract under subsection (1) (c) (ii), the owners' corporation must be satisfied that the conviction affects the manager's suitability to exercise the manager's functions.
- (3) The owners' corporation must end a management contract—
- (a) If the manager is absent, other than on approved leave, for 14 consecutive days or for 28 days in any 12-month period; or
 - (b) For physical or mental incapacity, if the incapacity substantially affects the exercise of the manager's functions.
- (4) In this section:
- (a) "insolvent" a corporation is taken to be "insolvent" if the corporation –
 - i) Is being wound up; or
 - ii) Has had a receiver or other controller appointed; or
 - iii) Has entered into a deed of company arrangement with its creditors; or
 - iv) Is otherwise under external administration.
 - (b) "remedial breach" means a remedial breach under section 53.

Section 53 – Manager (remedial breaches)

- (1) A manager commits a remedial breach if the manager—
- (a) Fails to exercise the manager's functions; or
 - (b) Contravenes the manager's code of conduct; or
 - (c) While exercising the manager's functions, is grossly negligent or engages in misconduct.
- (2) If the owners' corporation believes on reasonable grounds that a manager has committed a remedial breach, the corporation may give the manager written notice stating—
- (a) That the corporation believes the manager has committed a remedial breach; and
 - (b) Details of the remedial breach committed, sufficient to allow the manager to identify—
 - i) The function the manager failed to exercise; or
 - ii) The provision of the manager's code of conduct the corporation reasonably believes the manager contravened; or
 - iii) The gross negligence or misconduct; and
 - (c) That the manager must, within 14 days after the day the notice is given to the manager—
 - i) Give the corporation a written representation explaining why the manager's actions do not amount to a remedial breach; or
 - ii) Remedy the breach; and
 - (d) That the owners' corporation may end the manager's contract if—
 - i) The manager does not comply with the notice; or
 - ii) If the manager gives a written representation explaining why the manager's actions do not amount to a remedial breach—the corporation does not accept the manager's representation.

Section 54 – Manager (code of conduct)

A manager must comply with the code of conduct set out in schedule 1, part 1.2.

Section 55 – Manager (public liability insurance)

- (1) A manager must take out and maintain public liability insurance in relation to all of the following events happening because of any act or omission in the management of the owners' corporation by the manager:
 - (a) Death, bodily injury or illness to anyone;
 - (b) Loss of, or damage to, the property of anyone.
- (2) Public liability insurance under this section must be for a total amount of liability of at least **K25,000 000**.
- (3) A manager engaged to manage 2 or more owners' corporations may take out and maintain a single insurance policy for this section only if—
 - (a) The manager's insurer has been told that the manager manages 2 or more owners' corporations; and
 - (b) The insurance policy covers the risk in relation to each owners' corporation managed by the manager.

Section 56 – Manager (delegated functions)

- (1) The owners' corporation may, in writing given to the manager, delegate to the manager any of its functions under this Act or another national law.
- (2) The executive committee may, in writing given to the manager, delegate to the manager any of its functions under this Act or another national law.

DIVISION 10 SERVICE CONTRACTORS

Section 57 – Definitions

In this Division:

- (a) "Service contract" means a contract to provide service contractor services to an owners' corporation.
- (b) "Service contractor" means a person –
 - i) Contracted under section 58; or
 - ii) With whom an owners' corporation has a service contract.
- (c) "Service contractor services "means services provided by a service contractor in exercising the contractor's functions.

Section 58 – Service contractor (contract)

- (1) An owners' corporation for a strata plan may, by ordinary resolution, enter into a service contract with a person.
- (2) Without limiting subsection (1), an owners' corporation enters into a service contract if the corporation engages a person to carry out service contractor services.
- (3) However, the owners' corporation must not enter into a service contract for a period longer than 3 years (including any period for which the contract may be renewed or extended) unless the contract is authorised by special resolution.
- (4) A service contract entered into in breach of subsection (3) is void.
- (5) In this section "strata plan" includes part of a strata plan.

Section 59 – Service contractor not to be contracted for longer than 25 years

- (1) An owners' corporation must not enter into a service contract with a service contractor for longer than 25 years.
- (2) If an owners' corporation enters into a service contract with a service contractor for longer than 25 years, the contract is taken, for all purposes, to be a contract for 25 years.

Section 60 – Service contractor (functions)

- (1) A service contractor for an owners' corporation helps the corporation to exercise 1 or more of the following functions in relation to the common property of the units plan:
 - (a) Managing the common property;
 - (b) Supervising use of the common property;
 - (c) Maintaining and repairing the common property.
- (2) In this section "common property" includes part of the common property.

Section 61 – Service contractor (transfer)

- (1) A service contractor's rights under a service contract may be transferred only if the transfer is approved by the owners' corporation by ordinary resolution.
- (2) In deciding whether to approve the proposed transfer, the owners' corporation may consider the following:
 - (a) The character of the proposed transferee and associates of the proposed transferee;
 - (b) The proposed transferee's financial standing;
 - (c) The terms of the proposed transfer;
 - (d) The competence, qualifications and experience of the proposed transferee and associates of the proposed transferee;
 - (e) Whether the proposed transferee or associates of the proposed transferee have received, or are likely to receive, training in relation to the service contractor's functions;
 - (f) Anything else relevant to the service contract.
- (3) The owners' corporation must decide whether to approve a proposed transfer not later than 30 days after the day the corporation is asked in writing to approve the transfer
- (4) However, the owners' corporation must not—
 - (a) Unreasonably withhold the approval to transfer; or
 - (b) Require or receive a fee or other consideration for approving the transfer, other than reimbursement of legal or administrative expenses reasonably incurred by the corporation for the approval.
- (5) If the owners' corporation has not decided whether to approve a proposed transfer within the period mentioned in subsection (3), the corporation is taken to have approved the transfer.
- (6) In this section "associates of the proposed transferee" means –
 - (a) If the proposed transferee is a corporation—the corporation's directors, substantial shareholders and principal staff; or
 - (b) If the proposed transferee is a partnership or is in partnership—the partners and principal staff of the partnership.

Section 62 – Service contractor (ending contract)

- (1) The owners' corporation may end a service contract—
 - (a) For a remedial breach if notice has been given under section 63; or
 - (b) For misbehaviour; or

- (c) If the service contractor is an individual—if the individual—
 - i) Becomes bankrupt or personally insolvent; or
 - ii) Is convicted of an offence punishable by imprisonment for at least 1 year.
- (2) However, before ending a service contract under subsection (1) (c) (ii), the owners' corporation must be satisfied that the conviction affects the service contractor's suitability to exercise the contractor's functions.
- (3) The owners' corporation must end a service contract—
 - (a) If the service contractor is absent, other than on approved leave, for 14 consecutive days or for 28 days in any 12-month period; or
 - (b) For physical or mental incapacity, if the incapacity substantially affects the exercise of the service contractor's functions.
- (4) In this section a corporation is taken to be “insolvent” if the corporation —
 - (a) Is being wound up; or
 - (b) Has had a receiver or other controller appointed; or
 - (c) Has entered into a deed of company arrangement with its creditors; or
 - (d) Is otherwise under external administration.

Section 63 – Service contractor (remedial breaches)

- (1) A service contractor commits a remedial breach if the service contractor—
 - (a) Fails to exercise the service contractor's functions; or
 - (b) while exercising the service contractor's functions, is grossly negligent or engages in misconduct.
- (2) If the owners' corporation believes on reasonable grounds that a service contractor has committed a remedial breach, the corporation may give the service contractor written notice stating—
 - (a) that the corporation believes the service contractor has committed a remedial breach; and
 - (b) details of the remedial breach committed, sufficient to allow the service contractor to identify—
 - i) the function the service contractor failed to exercise; or
 - ii) the gross negligence or misconduct; and
 - (c) that the service contractor must, within 14 days after the day the notice is given to the service contractor —
 - i) give the corporation a written representation explaining why the service contractor's actions do not amount to a remedial breach; or
 - ii) remedy the breach; and
 - (d) that the owners' corporation may end the service contract if—
 - i) the service contractor does not comply with the notice; or
 - ii) if the service contractor gives a written representation explaining why the service contractor's actions do not amount to a remedial breach—the corporation does not accept the service contractor's representation.

DIVISION 11 COMMUNICATION OFFICERS

Section 64 – Communications officer (appointment)

- (1) This section applies to an owners' corporation for a strata plan if the units plan has 7 or more units.

- (2) The owners' corporation may, by ordinary resolution, appoint an owners' corporation communications officer.
- (3) Without limiting subsection (2)—
 - (a) a person may be appointed as a communications officer whether or not the person is a member of the owners' corporation; and
 - (b) the corporation may appoint the officer as a volunteer or may pay the officer.

Section 65 – Communications officer (function)

- (1) A communications officer helps the owners' corporation by improving communication so that conflict within the strata plan is avoided, minimised or resolved.
- (2) To improve communication, the communications officer may do 1 or more of the following:
 - (a) monitor communication techniques and procedures adopted by the owners' corporation for internal communication between the corporation, the executive committee, unit owners' and residents;
 - (b) identify for the executive committee ways in which internal communication can be improved;
 - (c) alert the executive committee, or committee members, if the officer becomes aware of potential conflict;
 - (d) advise the executive committee about ways in which the risk of conflict in the strata plan can be minimised;
 - (e) be available to the executive committee, or committee members, to be consulted about any internal communication matter.
- (3) However, the communications officer must not try to mediate or directly resolve a dispute.

PART 5 – FINANCIAL MANAGEMENT

DIVISION 12 FINANCIAL FUNCTIONS GENERALLY

Section 66 – Owners' corporation must have a bank account

- (1) An owners' corporation for a strata plan must—
 - (a) open and maintain an account with 1 or more authorised deposit-taking institutions; and
 - (b) pay all amounts it receives into the account; and
 - (c) pay all amounts it spends out of the account.
- (2) An owners' corporation for a units plan with only 2 or 3 units may, by unopposed resolution, exempt itself from subsection (1).

Section 67 – Owners' corporation may invest

- (1) An owners' corporation may invest its money as it considers appropriate, subject to any direction by special resolution.
- (2) However, an owners' corporation must not invest in a mortgage of land.

Section 68 – Owners' corporation may borrow

An owners' corporation may, if authorised by a special resolution, do 1 or more of the following:

- (a) borrow amounts required for the exercise of its functions;

- (b) secure the repayment of amounts borrowed by it and the payment of interest on amounts borrowed by it

Note Section 19 (2) prevents the owners' corporation from taking out a mortgage over the lease in the common property to secure repayment.

Section 69 – Owners' corporation must not carry on business

- (1) An owners' corporation must not carry on business except in the exercise of its functions.

Note The earning of income from the operation of sustainability infrastructure by an owners' corporation does not amount to carrying on business if the income is used to pay certain costs (see s 22 (4)).

- (2) If an owners' corporation contravenes subsection (1), each executive member of the corporation at the time of the breach commits an offence.

Maximum penalty: K10,000.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that—
 - (a) the defendant took reasonable steps to ensure that the contravention did not happen; or
 - (b) the contravention happened without the defendant's knowledge.

DIVISION 13 ADMINISTRATIVE, SPECIAL PURPOSE AND SINKING FUNDS

Section 70 - Administrative fund

An owners' corporation for a strata plan must establish a fund for the general administration of the corporation (an administrative fund).

Section 71 – Special purpose fund

- (1) An owners' corporation for a strata plan may, by special resolution, establish funds for particular purposes (a special purpose fund).
- (2) The purposes for which a special purpose fund may be used may only be changed by special resolution of the owners' corporation.

Section 72 – General fund (budget)

- (1) At each annual general meeting of an owners' corporation, the corporation must, by ordinary resolution, approve a budget (the general fund budget) for the administrative fund and each special purpose fund for the financial year in which the meeting is held.
- (2) The general fund budget must state for the financial year in which the annual general meeting is held—
 - (a) an estimate of the total contributions (the total general fund contribution) to be paid into the general fund by the owners' corporation's members; and
 - (b) an estimate of any other amounts to be paid into the general fund; and
 - (c) an estimate of payments to be made out of the general fund including an estimate of payments necessary—
 - i) to maintain in good condition on a day-to-day basis the common property and any other property held by the owners' corporation; and

- ii) to pay for insurance premiums; and
 - iii) to pay for recurrent expenses.
- (3) A payment out of a special purpose fund may only be included in the budget if the payment is for the purpose for which the fund was established, unless the proposed payment is authorised by special resolution.
- (4) The amount mentioned in subsection (2) (c) must not include transfers to the sinking fund.

Section 73 – General fund (what must be paid into the fund)

An owners' corporation for a strata plan must pay the following amounts into its general fund:

- (a) general fund contributions paid to the owners' corporation;
- (b) the proceeds of the disposal of any personal property of the owners' corporation;
- (c) any fees paid to the owners' corporation for inspection of its records and the provision of information and certificates relating to its records.

Section 74 – General fund (what can the fund be used for)?

An owners' corporation for a strata plan may only make payments from a general fund if the payments are—

- (a) approved in the general fund budget; or
- (b) authorised by ordinary resolution.

Section 75 – General fund (contributions)

- (1) An owners' corporation for a strata plan may, from time to time, determine a contribution (a general fund contribution) required from its members for the corporation's general fund.
- (2) The general fund contribution payable for each unit is—
 - (a) the proportional share for the unit of the total general fund contribution; or
 - (b) a proportion of the total general fund contribution worked out in accordance with a method set out in an unopposed resolution.
- (3) A resolution under subsection (2) (b) may provide that only stated unit owners', or unit owners' in a stated class, are required to pay a particular contribution, or a contribution of a particular kind.
- (4) A resolution under subsection (2) (b) may only be—
 - (a) amended by unopposed resolution; and
 - (b) revoked by special resolution.

Section 76 – General fund (notice of contributions)

- (1) An owners' corporation for a strata plan must give notice of a determination of general fund contributions to each unit owner.
- (2) The notice must include the following information:
 - (a) the general fund contribution payable for the unit;
 - (b) the general fund contributions payable for each other unit;
 - (c) the general fund for which the contribution is required, the proportion of the contribution to be paid into each fund, and the total amount to be paid into each fund;
 - (d) the proportion of the total general fund contribution payable for the unit and how the proportion is worked out;

- (e) the date when the contribution is payable, if paid in full (which must be not later than 28 days after the date of the notice);
- (f) if the contribution is payable by instalments—the dates when the instalments are payable;
- (g) how the contribution may be paid;
- (h) details of any discount for early payment decided by the owners' corporation under section 89;
- (i) details of interest payable for late payment under section 90.

Section 77 – General fund (when are contributions payable?)

A general fund contribution is payable by a unit owner—

- (a) if paid in full—on the date stated in the notice; or
- (b) if payable by instalments—on the dates stated in the notice.

Section 78 – Sinking fund

- (1) This section applies if there are 4 or more units in a strata plan.
- (2) An owners' corporation for the strata plan must establish and maintain a fund (the sinking fund).

Section 79 – Sinking fund plan

- (1) This section applies to an owners' corporation for a strata plan if the corporation is required to establish and maintain a sinking fund.
- (2) The owners' corporation must approve, by ordinary resolution, a plan for the sinking fund (a sinking fund plan) for the 10-year period beginning on the first day of the financial year following the approval.
- (3) The sinking fund plan must state—
 - (a) the expected sinking fund expenditure for at least the 10-year period of the plan; and
 - (b) for each financial year of the plan—the total contributions (the total sinking fund contribution) required from members of the owners' corporation necessary to—
 - i) meet the expected sinking fund expenditure for the financial year; and
 - ii) reserve an appropriate amount necessary to be accumulated to meet expected sinking fund expenditure over at least the remaining years of the plan.

Example In preparing its first sinking fund plan, the owners' corporation for a strata plan of recently constructed townhouses estimates that the expected sinking fund for the strata plan is K70,000 for the 10-year period of the plan, made up of K7,000 expected sinking fund for each financial year. Additionally, the owners' corporation estimates that internal roads in the unit's plan will need resurfacing in 15 year's time at an estimated cost of K120,000. The owners' corporation decides it is necessary, in the first 10-year plan, to accumulate K80,000 to meet the expected sinking fund for the resurfacing. The owners' corporation approves a total sinking fund contribution of K15,000 each year of the plan, made up of K7,000 to meet the expected sinking fund for each financial year and K8,000 to meet expected sinking fund for the resurfacing.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears.

Section 80 – Sinking fund plan (meaning of expected sinking fund)

- (1) For this division, "expected sinking fund expenditure" means expenditure for the following purposes that the owners' corporation reasonably expects will be necessary to maintain in good condition the common property and any other property it holds:
 - (a) the painting or repainting of any building (or any part of a building) that forms part of the common property;
 - (b) the acquisition of new property or renewal or replacement of property that it holds;
 - (c) the renewal, replacement or repair of fixtures and fittings that are part of the common property;
 - (d) the renewal, replacement or repair of anything else on the common property;
 - (e) for a building containing class A units—any purpose mentioned in paragraph (b), (c) or (d) that relates to defined parts of the building;
 - (f) for a building on a class B unit—any maintenance mentioned in paragraph (b), (c) or (d) that is authorised by a special resolution under section 23(1)(g);
 - (g) any other capital expenses for which the corporation is responsible.
- (2) In this section:
 - (a) "defined parts", of a building containing class A units—see section 23(2).
 - (b) "property" includes sustainability or utility infrastructure.

Section 81 – Sinking fund plan (when must it be approved?)

- (1) The owners' corporation for a strata plan must approve a sinking fund plan not later than—
 - (a) if the corporation is established after the commencement of this division—12 months after the day of the corporation's 1st annual general meeting; or
 - (b) in any other case—12 months after the day this division commences.
- (2) If the owners' corporation has approved a sinking fund plan under this Act, the corporation must approve a new sinking fund plan not later than 12 months before the end of the 10-year period to which the existing plan relates.

Section 82 - Sinking fund plan (review)

An owners' corporation for a strata plan must review its sinking fund plan—

- (a) not later than 4 years after the plan is first approved by the owners' corporation (the first review); and
- (b) not later than the end of each 5-year period after the first review.

Section 83 – Sinking fund plan (amendment)

An owners' corporation for a strata plan may at any time, by ordinary resolution, amend its sinking fund plan to ensure that—

- (a) the plan reflects expected sinking fund expenditure; and
- (b) the total sinking fund contributions are sufficient to meet the expected sinking fund expenditure stated in the plan.

Example, An owners' corporation for a units plan approves a sinking fund plan that sets a total sinking fund contribution of K15,000 for each year of the plan. Three years after

approving the plan, the owners' corporation finds out that major work is required to water and sewerage pipes in the common property at an estimated cost of K60,000. The owners' corporation, by ordinary resolution, amends the sinking fund plan to include the additional expected sinking fund expenditure and require additional contributions of K10,000 a year for the remaining years in the plan. The total sinking fund contribution for each financial year after the amendment is K25,000.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears.

Section 84 – Sinking fund (what must be paid into the fund?)

An owners' corporation for a strata plan must pay the following amounts into its sinking fund:

- (a) sinking fund contributions paid to the owners' corporation;
- (b) any amount received by the owners' corporation that is not required or allowed to be paid into a general fund;
- (c) any amount authorised by an ordinary resolution to be transferred from the administrative fund to the sinking fund;
- (d) any amount to be transferred from a special purpose fund to the sinking fund—
 - i) in accordance with the purpose of the special purpose fund; or
 - ii) that is authorised by a special resolution.

Section 85 – Sinking fund (what can it be used for?)

An owners' corporation for a strata plan may only make payments from its sinking fund if the payments are consistent with the sinking fund plan.

Note Expenditure from the sinking fund for the purpose of installing sustainability or utility infrastructure must be provided for in the sinking fund plan (see s 22).

Section 86 – Sinking fund (contributions)

- (1) An owners' corporation for a strata plan may determine a contribution (a sinking fund contribution) required from its members for the corporation's sinking fund.
- (2) The sinking fund contribution payable for each unit for a financial year is—
 - (a) the proportional share for the unit of the total sinking fund contribution for the financial year; or
 - (b) a proportion of the total sinking fund contribution worked out using a method set out in an unopposed resolution.
- (3) A resolution under subsection (2) (b) may provide that only stated unit owners', or unit owners' in a stated class, are required to pay a sinking fund contribution.
- (4) A resolution under subsection (2) (b) may only be—
 - (a) amended by unopposed resolution; or
 - (b) revoked by special resolution.

Section 87 – Sinking fund (notice of contributions)

- (1) An owners' corporation for a strata plan must, within 1 month after an annual general meeting, give notice to each unit owner of the determination of sinking fund contributions for the financial year when the meeting takes place.
- (2) The notice must include the following information:
 - (a) the sinking fund contribution payable for the unit;
 - (b) the sinking fund contributions payable for each other unit;

- (c) the total sinking fund contribution for the financial year;
- (d) the proportion of the total sinking fund contribution payable for the unit and how the proportion is worked out;
- (e) the date when the contribution is payable, if paid in full (which must be not later than 28 days after the date of the notice);
- (f) if the contribution is payable by instalments—the dates when the instalments are payable;
- (g) how the contribution may be paid;
- (h) details of any discount for early payment decided by the owners' corporation under section 89;
- (i) details of interest payable for late payment under section 90.

Section 88 – Sinking fund (when are contributions payable?)

A sinking fund contribution is payable by a unit owner—

- (a) if paid in full—on the date stated in the notice; or
- (b) if payable by instalments—on the dates stated in the notice.

Section 89 – General and sinking funds in staged developments

- (1) This section applies to a general fund or sinking fund established by an owners' corporation for a staged development if the development has not been completed.
- (2) A contribution to a fund is not payable by the owner of a unit if the unit is in an uncompleted stage of the development.
- (3) The owners' corporation must not pay an amount from a fund in relation to an uncompleted stage of the development.

DIVISION 14 POWERS IN RELATION TO MONEY OWING TO OWNERS' CORPORATION

Section 90 – Discounts (amounts owing)

- (1) An owners' corporation for a strata plan may, by ordinary resolution, decide that a stated discount applies to an amount owing to the corporation by a unit owner if—
 - (a) the amount is paid to the corporation before the date it becomes payable; or
 - (b) for contributions payable by instalments—if the contribution is paid—
 - i) in full on or before the date stated in the notice of the contribution for payment in full; or
 - ii) in another way stated in the resolution.
- (2) In this section “contribution” means a general fund contribution or a sinking fund contribution.

Section 91 – Interest (amounts owing)

- (1) If an amount owing to an owners' corporation by a unit owner is not paid on or before the date it becomes payable, unless otherwise decided by ordinary resolution, the amount bears simple interest until paid—
 - (a) at an annual rate of 10%; or
 - (b) at an annual rate of less than 10%, if decided by special resolution; or
 - (c) at an annual rate of more than 10% and not more than 20%, if decided by special resolution.

- (2) Interest on an amount owing to the owners' corporation is payable into the fund into which the amount owing is payable.

Section 92 – Recovery of amounts owing

- (1) If an amount owing to an owners' corporation is not paid on or before the date it is payable, the corporation may recover the amount as a debt from the unit owner, together with interest under section 90.
- (2) If the ownership of a unit changes after an amount owing to the owners' corporation becomes payable, the owner at the time the amount becomes payable and each subsequent owner is liable both separately and together for the amount, together with interest under section 90.

Section 93 – Security for unpaid amounts (declaration of charge)

- (1) If an amount owing to the owners' corporation is unpaid after it becomes payable, the corporation may declare that a charge is to be imposed over the lease of the unit to secure payment of the amount.
- (2) The declaration must—
 - (a) give details of the lease of the unit to be charged; and
 - (b) state the unpaid amount owing to the owners' corporation.
- (3) After making the declaration, the owners' corporation must—
 - (a) lodge with the Registrar of Titles a copy of the declaration, certified as a true copy under the seal of the corporation; and
 - (b) give a copy of the declaration to the unit owner and anyone else who has an interest in the unit.
- (4) On registration of the copy of the declaration, the amount stated in the declaration, together with interest on the amount under section 90, is a charge over the lease of the unit.
- (5) A registered charge under this section does not give a power of sale over the lease of the unit.

Section 94 – Security for unpaid amounts (discharge)

- (1) This section applies if a charge declared under section 96 has been registered, and—
 - (a) the entire amount for which the charge was declared is paid, together with interest on the amount under section 90; or
 - (b) the owners' corporation considers that the charge is no longer required.
- (2) The owners' corporation must—
 - (a) revoke the declaration of the charge; and
 - (b) lodge with the Registrar of Titles a copy of the revocation, certified as a true copy under the seal of the corporation; and
 - (c) give a copy of the revocation to the unit owner and anyone else who has an interest in the unit.
- (3) The discharge under this section of a charge takes effect on the registration of the revocation of the charge.

Section 95 – Liability of part-owners

- (1) This section applies if –
 - (a) a unit is owned by 2 or more part-owners; and
 - (b) an amount is recoverable by the owners' corporation from the owners.

- (2) The part-owners are liable separately and together for the payment of the amount.
- (3) As between themselves, each part-owner is liable for a part of the amount proportional to the value of the part-owner's interest in the unit.
- (4) If a part-owner pays a part of the amount that is more than the part-owner's proportional liability, the part-owner may recover the excess from the other part-owners.

DIVISION 15 INSURANCE

Section 96 – Meaning of building land

In this Division:

- (1) “building” on the land –
 - (a) Includes –
 - i) any improvements and fixtures forming part of the building; and
 - ii) any improvements and fixtures, including site improvements, consisting entirely of common property; and
 - iii) anything prescribed by this Act as forming part of a building; but
 - (b) does not include—
 - i) paint, wallpaper and temporary wall, floor and ceiling coverings; or
 - ii) fixtures removable by a lessee or sublessee of a unit at the end of a lease; or
 - iii) anything prescribed by this Act as not forming part of a building.
- (2) “land” means –
 - (a) land subdivided by a strata plan; and
 - (b) for a staged development—the whole of the land in the completed stages of the development.

Section 97 – Building insurance by owners’ corporation

- (1) An owners’ corporation for a strata plan must insure and keep insured all buildings on the land for their replacement value from time to time against all of the following risks:
 - (a) fire, lightning, tempest, earthquake and explosion;
 - (b) riot, civil commotion, strikes and labour disturbances;
 - (c) malicious damage;
 - (d) bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus;
 - (e) impact of aircraft (including parts of, and objects falling from, aircraft) and of road vehicles, horses and cattle.
- (2) The owners’ corporation must take out an insurance policy that covers, to the greatest practicable extent—
 - (a) the risks mentioned in subsection (1); and
 - (b) costs incidental to the reinstatement or replacement of the insured building, including the cost of removing debris and the fees of architects and other professional advisers.
- (3) A regulation may make provision in relation to an insurance policy required to be taken out by the owners’ corporation under this section including for the following:
 - (a) payment by unit owners’ of any excess payable under the policy;
 - (b) combining the policy with other insurance policies;
 - (c) notification requirements by unit owners’ in relation to improvements made to units;

- (d) the proportion of the premium payable for the policy by particular unit owners' by way of a general fund contribution;
 - (e) valuation of the insured buildings.
- (4) For all purposes related to any insurance taken out by it under this section, an owners' corporation is taken to have an insurable interest in the buildings on the land to the extent of their replacement value.

Section 98 – Exemption from building insurance requirements

- (1) If the replacement value of all common property buildings (or parts of buildings) on the land is less than an amount of K25,000, the owners' corporation may, by unanimous resolution, exempt itself from the requirement to take out building insurance under section 96(1) for any risk stated in the exemption resolution.
- (2) An owners' corporation for a strata plan containing only class B units may, by unanimous resolution, exempt itself from the requirement to take out building insurance for any risk stated in the exemption resolution for all buildings (or parts of buildings) that are on the class B units.
- (3) An exemption resolution under this section has effect from the date of the annual general meeting when it is passed until the date of the next annual general meeting.

Section 99 – Public liability insurance by owners' corporation

- (1) An owners' corporation for a strata plan must take out and maintain public liability insurance in relation to all of the following events happening in relation to the common property:
 - (a) death, bodily injury or illness of anyone;
 - (b) loss of, or damage to, the property of anyone.
- (2) Public liability insurance under subsection (1) must be for a total amount of liability of not less than an amount of K25,000,000.

Section 100 – Application of insurance money by owners' corporation

- (1) If an owners' corporation for a strata plan receives insurance money for damage to, or destruction of, any building on the land, the corporation must, without delay, apply the insurance money to rebuilding and reinstating the building.
- (2) Subsection (1) applies subject to this Act, other national laws and any order of a court.

Section 101 – Additional insurance (owners' corporation)

This division does not limit the right of an owners' corporation to take out additional insurance.

Section 102 – Additional insurance (unit owners')

This division does not limit the right of a unit owner to insure against damage to, or destruction of, the unit to the extent of its replacement value.

PART 6 – OWNERS' CORPORATION RULES

Section 103 – What are the rules of an owners' corporation?

The rules of an owners' corporation are set out in schedule 4 (the default rules).

Section 104 – Effect of rules

- (1) There are taken to be agreements under seal between an owners' corporation and each of its members, and between each member and each other member, under which the corporation and its members agree to be bound by the rules of the corporation.

- (2) An occupier of a unit (who is not the owner of the unit) is bound by each rule of the corporation as if the occupier were the owner of the unit, unless the rules provide otherwise.
- (3) If the unit owner does not occupy the unit, the owner is liable separately and together with an occupier of the unit for any breach of the rules of the owners' corporation by the occupier, unless the owner proves that the owner took reasonable precautions and exercised appropriate care to prevent the breach.

Section 105 – Owners' corporation may amend rules

- (1) An owners' corporation may, by special resolution, amend its rules.
- (2) An amendment of the rules of an owners' corporation takes effect—
 - (a) on the registration of a copy of the special resolution making the amendment, certified under the seal of the corporation as a true copy; or
 - (b) from a later date stated in the resolution.
- (3) An amendment to the rules of an owners' corporation has no effect to the extent that it results in the rules—
 - (a) being inconsistent with this Act or another national law; or
 - (b) giving a function to the corporation that is not incidental or ancillary to the exercise of its functions under this Act; or
 - (c) prohibiting or restricting any dealing (including devolution, transfer, lease and mortgage) with—
 - i) an interest in a unit; or
 - ii) the equitable estate of a unit owner in the common property; or
 - (d) prohibiting or restricting the installation, operation or maintenance of sustainability or utility infrastructure.
- (4) In this section "amendment", of rules, includes variation, rescission, substitution or addition.

Section 106 – Breach of rules (rule infringement notice)

- (1) This section applies if the executive committee of an owners' corporation reasonably believes that—
 - (a) the owner or occupier (the person) of a unit has contravened a provision of the corporation's rules; and
 - (b) the circumstances of the contravention make it likely that the contravention will continue or be repeated.
- (2) The owners' corporation may, if authorised by an ordinary resolution of the executive committee, give the person a notice (a rule infringement notice) requiring the person to remedy the contravention.
- (3) A rule infringement notice must state the following:
 - (a) that the owners' corporation believes the person is contravening, or has contravened, a provision of the rules;
 - (b) the provision of the rules the owners' corporation believes is, or was, contravened;
 - (c) details sufficient to identify the contravention;
 - (d) if the owners' corporation believes the contravention is continuing—the period (which must be reasonable in the circumstances) within which the person must remedy the contravention;
 - (e) if the owners' corporation believes the contravention is likely to be repeated—that the person must not repeat the contravention;

- (f) if the person does not comply with the notice—
 - i) the person commits an offence; and
 - ii) the owners' corporation may, without further notice, apply to the Supreme Court for an order in relation to the failure to comply with the notice.
- (4) If a rule infringement notice is given to a person following a request under section 107, the owners' corporation must, not later than 14 days after the day the request was received, tell the person who made the request that the notice has been given.

Section 107 – Breach of rules (failure to comply with rules infringement notice)

- (1) A person commits an offence if the person—
 - (a) is given a rule infringement notice under section 105; and
 - (b) does not comply with the notice.

Maximum penalty: K1,000.

- (2) However, the person does not commit an offence under this section if, when the rule infringement notice is given to the person, the person is not contravening, or has not contravened, the provision mentioned in the notice in the way detailed for section 109(3)(c).

Section 108 – Breach of rules (request for rule infringement notice)

- (1) This section applies if –
 - (a) a dispute exists between the owner or occupier of a unit in a units plan (the complainant) and the owner or occupier of another unit in the units plan (the *accused* person); and
 - (b) the dispute arises because the complainant reasonably believes that—
 - i) the accused person has contravened a provision of the corporation's rules; and
 - ii) the circumstances of the contravention make it likely that contravention will continue or be repeated.
- (2) The complainant may ask the owners' corporation to give the accused person a rule infringement notice for the contravention.

Section 109 – Interpretation

Terms used in the rules of an owners' corporation have the same meaning as in this Act, unless the contrary intention appears.

PART 7 – OWNERS' CORPORATION RECORDS

Section 110 – Corporate register (establishment)

- (1) An owners' corporation for a strata plan must establish and maintain a register (the "corporate register") that includes—
 - (a) the information mentioned in section 110 (1) for each unit; and
 - (b) the information mentioned in section 110 (2).
- (2) The corporate register may be kept in electronic form.

Section 111 – Corporate register (information to be included)

- (1) The owners' corporation for a strata plan must record on the corporate register the following information for each unit:

- (a) if the unit is owned by 1 person—the full name and an address for correspondence of the unit owner;
 - (b) if the unit is owned by 2 or more part-owners—the full name and address for correspondence of the part-owners' representative and each other part-owner;
 - (c) if the unit owner is a company—the full name and address for correspondence of the company's representative;
 - (d) if a mortgagee voting notice has been given for the unit—the full name and address for correspondence of the mortgagee's representative;
 - (e) if notified in writing to the corporation—the full name and an address for correspondence of anyone else with an interest in the unit together with details of the interest;
 - (f) the full name of the occupier of the unit (including the owner if the owner occupies the unit).
- (2) Also, the owners' corporation must record on the corporate register the following information:
- (a) the full names of the current executive members;
 - (b) if notified in writing to the corporation—the full name and an address for correspondence of anyone with an easement over the common property together with details of the easement.

Section 112 – Corporate register

- (1) A unit owner must give the owners' corporation for the strata plan written notice of the details of any of the following events within 14 days after the event happens:
- (a) the owner entering into an agreement to transfer the lease of the unit to someone else;
 - (b) the lodgement for registration, by the unit owner, of the instrument under which the person became the owner;
 - (c) a change in the owner's name or address for correspondence;
 - (d) a change of occupancy of the unit;
 - (e) a vacancy in occupancy of the unit that is expected to be longer than a continuous period of 30 days.
- (2) Subsection (1) may be enforced in the same way as a rule of the owners' corporation.
- (3) A person, other than a unit owner, may give the owners' corporation written notice of the details of the following events:
- (a) the person agreeing to transfer an interest in the lease of a unit or the common property to someone else;
 - (b) the lodgement for registration, by the person, of an instrument under which the person acquires an interest in a unit or the common property;
 - (c) the person acquiring an interest in a unit or the common property other than a registered interest;
 - (d) if the person has an interest in a unit or the common property—a change in the full name or address for correspondence of the person;
 - (e) a change in the nature of an interest held by the person in a unit or the common property, including the person's ceasing to have the interest.

Section 113 – Corporate register (access)

- (1) On request by an eligible person for a unit or the common property, the owners' corporation for the strata plan must allow the person, within 14 days after the request is received, to inspect, and take a copy of—
 - (a) for a request by an eligible person for a unit—the information on the corporate register about the unit and any easements with which the common property is benefited or burdened; or
 - (b) for a request by an eligible person for the common property—the information on the corporate register about any easements with which the common property is benefited or burdened.
- (2) On request by an applicant for a court order under this Act, the owners' corporation must allow the applicant to inspect, and take a copy of, the names and addresses for correspondence recorded on the corporate register of each unit owner and anyone else with an interest in a unit, or the common property, that is recorded on the register.
- (3) A request must be in writing accompanied by a fee fixed by the owners' corporation of not more than an amount of **K30**.
- (4) The corporate register must be kept in a way that ensures that a person who is entitled to inspect the register does not have access to any information the person is not entitled to inspect.

Section 114 – Names and addresses of executive members

On request by an eligible person for a unit or the common property, the owners' corporation must, free of charge, give the person the full names and addresses of its current executive members within 14 days after the request is received.

Section 115 – Insurance information

On request by an eligible person for a unit or the common property, the owners' corporation must, free of charge, allow the person to inspect, and take a copy of, the following documents within 14 days after the request is received:

- (a) any current insurance policy or policies taken out by the corporation;
- (b) the receipts for all premiums paid under current policies taken out by the corporation;
- (c) the part of the minutes of any annual general meeting of the corporation that records any exemption resolution under section 97 (Exemptions from building insurance requirements).

Section 116 – Strata title certificate and access to owners' corporation records

- (1) On request by an eligible person for a unit or the common property for a certificate (the strata title certificate), the owners' corporation must, within 14 days after the day the request is received, give the person the certificate under the seal of the corporation giving the information about the unit or common property determined by the Minister.
- (2) On request by an eligible person for a unit or the common property to inspect the records of an owners' corporation, the corporation must, within 14 days after the day the request is received, allow the person—
 - (a) to inspect—
 - i) the information on the corporate register; and
 - ii) any other records held by the corporation; and

- (3) If a dispute exists, the owners' corporation may withhold from inspection documents subject to legal professional privilege in relation to the dispute.
- (4) A request under this section must be in writing accompanied by a fee fixed by the owners' corporation of not more than an amount determined by the Minister.

Section 117 – Acting on information in strata title certificate

If a person acts honestly on a matter stated in a strata title certificate, then, in an action by or against the owners' corporation, the corporation is estopped, as against that person, from denying the truth of that or any other matter stated in the certificate.

Section 118 – Failure to provide information or certificate (offence)

- (1) If an owners' corporation for a strata plan fails to comply with a request under this part for information or a strata title certificate, each executive member of the corporation at the time of the failure commits an offence.

Maximum penalty: **K1,000**

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
 - (a) the person requesting the information, when asked by someone acting for the owners' corporation, did not give the corporation reasonable grounds to believe that the person was an eligible person; or
 - (b) the defendant took reasonable steps to ensure that the request was complied with; or
 - (c) the failure to comply with the request happened without the defendant's knowledge.

Section 119 – Owners' corporation name and address

- (1) An owners' corporation for a strata plan must ensure that a notice showing the name of the corporation, and the address shown on the strata plan for the service of documents, is continuously displayed in a conspicuous place on the land.
- (2) If an owners' corporation changes its address for service of documents, it must lodge notice of the change with the Registrar of Titles.

Section 120 – Service of documents on owners' corporation

For this Act and the Strata Title Act 2020 (including an application for a court order under either Act) a document may be served on an owners' corporation by –

- (a) by posting it to the post office box registered to the owners' corporation; or
- (b) serving it in another way approved by the corporation by ordinary resolution.

Section 121 – Service of documents on members, interested people and occupiers

- (1) For this Act and the Strata Title Act 2020 (including an application for a court order under either Act) a document may be served on a unit owner or anyone else with an interest in a unit or the common property on a strata plan by—
 - (a) sending it by prepaid post as a letter to the relevant address for correspondence recorded on the corporate register; or
 - (b) serving it in another way directed by the person to be served.
- (2) If a unit is owned by 2 or more part-owners, and a document is required or permitted to be served on the owner, service of the document under this section on the part-owners' representative is sufficient.

- (3) If an owner of a unit is a company, and a document is required or permitted to be served on the company, service of the document under this section on the company's representative is sufficient.
- (4) If a mortgagee voting notice is current for a unit, and a document is required or permitted to be served on the mortgagee, service of the document under this section on the mortgagee's representative is sufficient.
- (5) If a unit has an occupier who is not an owner of the unit, and a document is required or permitted to be served on the occupier, the document may be served on the occupier—
 - (a) posting it to the post office box registered to the occupier; or
 - (b) by giving it personally to the occupier; or
 - (c) by serving it in another way directed by the occupier.

PART 8 – DISPUTE RESOLUTION

Section 122 – Disputes involving the owners' corporation (generally)

- (1) This section applies to a dispute relating to an owners' corporation for a strata plan between the corporation and any 1 of the following:
 - (a) an owner or occupier of a unit in the units plan;
 - (b) the manager (if any) for the owners' corporation;
 - (c) a service contractor for the owners' corporation;
 - (d) an executive member.
- (2) A party to the dispute may apply for a court order in relation to the other party if the application relates to the dispute.

Section 123 – Disputes between unit owners

- (1) This section applies to a dispute relating to an owners' corporation for a strata plan between two or more unit owners.
- (2) A party to the dispute may apply for a court order in relation to the other party if the application relates to the dispute.

PART 9 – PROTECTION OF FINANCIERS FOR SERVICE CONTRACTS

Section 124 – Meaning of financed service contract and financier

In this Part:

- (a) “financial service contract” means a service contract financed by a financier under section 125.
- (b) “financier” see section 125.

Section 125 – Who is a financier for a service contract?

- (1) A person is a financier for a service contract if –
 - (a) The person –
 - i) is a financial institution; or
 - ii) in the ordinary course of the person's business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts for security; or
 - iii) if the contract exists immediately before the commencement of this part—
at the time the finance was supplied for a business acquisition using a charge

over the contract for security, was a person mentioned in subparagraph (ii);
and

- (b) a service contractor for the contract and the person give written notice signed by each of them to the owners' corporation that the person is a financier for the contract.
- (2) A person stops being a financier for a service contract if the person gives the owners' corporation written notice withdrawing the notice given under subsection (1).
- (3) A notice under subsection (2) may be given without the service contractor's agreement.

Section 126 – Financed service contract (notice of change)

The owners' corporation for a strata plan must give the financier for a financed service contract written notice of—

- (a) any change made to the contract by the corporation and the service contractor; or
- (b) any arrangement entered into by the corporation and the service contractor that affects the contract.

Section 127 – Financed service contract (limitation on ending)

- (1) The owners' corporation for a strata plan may end a financed service contract only if—
 - (a) the corporation gives the financier written notice that the corporation has the right to end the contract; and
 - (b) when the notice is given to the financier, the corporation has the right to end the contract; and
 - (c) the corporation gives the notice to the financier not less than 21 days before the day the contract is ended.
- (2) However, the owners' corporation may not end the financed service contract if, under an arrangement between the financier and the service contractor, the financier has given the corporation notice under section 128.
- (3) Subsection (2) does not stop the owners' corporation ending a service contract for something done or not done after the financier started to act under the contract.
- (4) This section does not stop a financed service contract ending by agreement between the owners' corporation, service contractor and financier.

Section 128 – Financed service contract (person authorised to act for financier)

- (1) The financier for a financed service contract may take the following action:
 - (a) act under the contract in place of the contractor;
 - (b) appoint a receiver, or a receiver and manager, for the contract.
- (2) However, the financier may only take action under subsection (1) if—
 - (a) the financier has given written notice to the owners' corporation of the financier's intention to take the action; and
 - (b) at the time the notice is given to the owners' corporation, the corporation—
 - i) has not given the financier notice under section 127(1)(c); or
 - ii) has given and withdrawn the notice to the financier.
- (3) The financier may authorise a person to act for the financier for subsection (1)(a) if—
 - (a) the person is not the service contractor or an associate of the contractor; and
 - (b) the owners' corporation approves the person.
- (4) In deciding whether to approve a person under subsection (3), the owners' corporation—
 - (a) must act reasonably in the circumstances and decide as soon as practicable; and

- (b) may only consider—
 - i) the person's character; and
 - ii) the person's competence, qualifications and experience.
- (5) However, the owners' corporation must not—
 - (a) unreasonably withhold the person's approval; or
 - (b) require or receive a fee or other consideration for approving the person, other than reimbursement of legal or administrative expenses reasonably incurred by the corporation for the approval.

Section 129 – Financed service contract (agreement between owners' corporation and financier prohibited)

- (1) A financier for a financed service contract must not enter into an agreement or other arrangement with the owners' corporation under the contract for a matter relating to—
 - (a) the financier's role for the contract; or
 - (b) arrangements between the financier and service contractor under which the financier is acting, or may act, under the contract in the contractor's place; or
 - (c) the operation of this part in relation to the contract.
- (2) An agreement or arrangement to which this section applies is void to the extent it contravenes this section.

PART 10 – ADMINISTRATORS

DIVISION 16 INTERESTED PARTIES

Section 130 – Who may apply for an administration order?

Any of the following people (an interested party) may apply to the Supreme Court for an order under division 10.2 (an administration order) in relation to the administration of an owners' corporation:

- (a) the corporation;
- (b) a creditor of the corporation;
- (c) a unit owner, or anyone else with an interest in a unit, or the common property, that is recorded in the corporate register.

Section 131 – Supreme Court appearances and service of applications

- (1) An interested party has a right to appear on an application by another interested party for an administration order.
- (2) The applicant must serve a copy of the application on every other interested party, except the creditors (or the other creditors) of the owners' corporation.
- (3) The owners' corporation must serve all its creditors with a copy of the application—
 - (a) if the owners' corporation is the applicant—after making the application; or
 - (b) in any other case—on being served with a copy of the application.
- (4) An interested party may be represented by a lawyer or someone else.

DIVISION 17 APPOINTMENT, REMOVAL AND FUNCTIONS

Section 132 – Appointment of administrator

- (1) On an application by an interested party, the Supreme Court may, by order, appoint the person named in the application to be administrator of the owners' corporation on the terms about remuneration and anything else it considers appropriate.

- (2) The Supreme Court may make an order appointing an administrator only if satisfied that the administrator consents to the order.
- (3) In an order appointing an administrator, the Supreme Court may give any directions it considers appropriate for giving notice of the order to the administrator, the Registrar of Titles and the owners' corporation.
- (4) The remuneration of an administrator of an owners' corporation and the expenses incurred in the exercise of the administrator's functions under this Act are taken to be expenditure incurred by the corporation.

Section 133 – Removal or replacement of administrator

- (1) On an application by an interested party, the Supreme Court may, by order, remove or replace an administrator.
- (2) In an order removing or replacing an administrator, the ACAT may give any directions it considers appropriate for giving notice of the order to the Registrar of Titles and the owners' corporation.

Section 134 – Functions of administrator

- (1) The administrator of an owners' corporation has all the functions of the corporation to the exclusion of the corporation and its executive committee.
- (2) However, an order of the Supreme Court under subsection (3) is required for an administrator to do anything that is required by this Act to be authorised by an unopposed or unanimous resolution.
- (3) On application by an interested party, the Supreme Court may make any order it considers appropriate about the exercise of the administrator's functions, including, for example, an order mentioned in subsection (2).

Section 135 – Delegation by administrator

The administrator of an owners' corporation may delegate the administrator's functions to anyone else.

PART 11 – MISCELLANEOUS

Section 136 – Mortgage insurance of unit

If the interest of a unit owner is subject to a mortgage, the owner may take out 1 or more policies of insurance (a mortgage insurance policy) for indemnity against liability under the mortgage arising out of damage to, or destruction of, the unit.

Section 137 – Payment under mortgage insurance policies

- (1) If a mortgage insurance policy is in force for a unit, the insurer is liable to pay to a mortgagee whose interest is noted on the policy the least of the following amounts:
 - (a) the amount insured as stated in the policy;
 - (b) the amount of the loss;
 - (c) the amount sufficient, at the date of the loss, to discharge the mortgage noted on the policy.
- (2) If the interests of 2 or more mortgagees are noted on the policy, subsection (1) applies to the mortgagees in their order of registered priority.

Section 138 – Transfer of mortgagee’s interest to insurer

- (1) Payment by the insurer to a mortgagee under section 137 does not entitle the unit owner to a discharge of the mortgage.
- (2) On payment by the insurer to a mortgagee under section 143—
 - (a) if the amount paid equals the amount necessary to discharge the mortgage—the insurer is entitled to obtain from the mortgagee a transfer of the mortgage; or
 - (b) if the amount paid is less than the amount necessary to discharge the mortgage—the insurer is entitled to obtain from the mortgagee a transfer of an undivided share of the mortgagee's interest in the mortgage that bears to that interest the same proportion as the amount paid bears to the amount that was owing under the mortgage immediately before the payment.

SCHEDULE 1 DICTIONARY

administrator of an owners' corporation, means a person who is appointed as the administrator of the corporation under part 10 (Administrators).

appoint includes engage.

building –

- (a) for this Act generally – see Strata Title Act 2020, dictionary; and
- (b) for division 5.4 (Insurance) – see section 95.

class A unit see the Strata Title Act 2020 section 9.

class B unit see the Strata Title Act 2020 section 10.

common property see Strata Title Act 2020 section 14.

company means a corporation.

Department means the Department of Land and Physical Planning or its successor.

developer see the Strata Title Act 2020, dictionary.

development of a unit or common property – see the Strata Title Act 2020.

eligible person, for a unit or common property in relation to which access to information is required, means—

- (a) the owner, or another person with an interest in the unit, or in an easement over the common property; or
- (b) for a unit that is owned, or part-owned, by a company—the representative of the company; or
- (c) anyone authorised in writing by a person mentioned in paragraph (a) or (b); or
- (d) if access to the information is necessary or desirable for the administration of this Act—the Department.

entitled to vote, in relation to a motion at a general meeting of an owners' corporation, means a person who is entitled to vote on the motion under schedule 3, section 3.20.

executive member means a member of an executive committee.

financial year, for an owners' corporation, means—

- (a) a period of 12 months beginning on 1 January; or
- (b) any other period of 12 months decided by the owners' corporation.

full name, of a company, means the full name of the company together with the full name of its secretary or public officer (or an equivalent office-holder).

install includes build, place, connect or erect.

interest see the Strata Title Act 2020, dictionary.

land means—

- (a) for this Act generally—the land subdivided by the strata plan; and
- (b) for division 5.4 (Insurance)—see section 95.

lease of a unit or common property – see the Strata Title Act 2020, dictionary.

lessee see the Strata Title Act 2020, dictionary.

maintenance, of a building, a facility for a utility service or a utility conduit, means maintenance in good repair and working order, and includes—

- (a) repair; and
- (b) replacement; and
- (c) renewal; and
- (d) restoration.

member of an owners' corporation, is a member under section 9.

mortgage means a registered mortgage, or a registered encumbrance, within the meaning of the Land Registration Act 1981.

mortgagee means –

- (a) for a unit—the registered proprietor of a mortgage of the lease of the unit; or
- (b) in any other case—the registered proprietor of a mortgage.

mortgagee voting notice see schedule 3, section 3.23.

ordinary resolution means a resolution of a general meeting passed as required by schedule 3, section 3.15.

owner means –

- (a) for a unit—the registered proprietor of the lease of the unit and includes a part-owner; or
- (b) for common property—the owners' corporation.

owners' corporation, for a strata plan, means a corporation established under section 7.

part-owner, of a unit, means a person registered as a joint tenant or tenant in common in relation to the unit.

proprietor of an interest in land, see the Strata Title Act 2020, dictionary.

registered see the Strata Title Act 2020, dictionary.

special resolution means a resolution of a general meeting passed as required by schedule 3, section 3.16.

staged development see the Strata Title Act 2020, section 17(4).

standard quorum—see schedule 3, section 3.9.

strata plan see the Strata Title Act 2020, dictionary.

sustainability infrastructure, installed in relation to a strata plan—

- (a) means infrastructure and equipment that—
 - i) improves the environmental sustainability of the units; or
 - ii) reduces the environmental impact of the owners' corporation and the unit owners';
and
- (b) includes related utility service connections and equipment.

unanimous resolution means a resolution of a general meeting passed as required by schedule 3, section 3.18.

unit see the Strata Title Act 2020, section 8.

unit entitlement see the Strata Title Act 2020, section 7.

unit owner means the registered proprietor of the lease of the unit and includes a part-owner.

unit subsidiary see the Strata Title Act 2020, section 11.

unopposed resolution means a resolution of a general meeting passed as required by schedule 3, section 3.17.

utility conduit see the Strata Title Act 2020, dictionary.

utility infrastructure means infrastructure and equipment necessary for, or related to, the provision of utility services.

utility services see the Strata Titles Act 2020, dictionary.

voting value see schedule 3, section 3.28(2).

SCHEDULE 2 GENERAL

PART 1 - GENERAL MEETINGS

1.1 - Conduct of general meetings

An owners' corporation for a strata plan may hold, adjourn and otherwise regulate general meetings as it considers appropriate, subject to this schedule.

1.2 - Annual general meetings

- (1) An owners' corporation for a strata plan must hold an annual general meeting each financial year.
- (2) Except for the first annual general meeting, an annual general meeting must be held within 15 months after the last annual general meeting.

1.3 - First annual general meeting

- (1) The first annual general meeting of an owners' corporation for a strata plan must be held within 3 months after the registration of the strata plan.
- (2) The first annual general meeting of an owners' corporation may be called by the executive committee of the corporation or by a member of the corporation.

1.4 - First annual general meeting – developer to deliver records

At the first annual general meeting of an owners' corporation for a strata plan, the developer must give the following records to the corporation:

- (a) the statutory books and records of the corporation, up to the date of the meeting;
- (b) any insurance policy issued in the name of the corporation;
- (c) any plans, specifications, diagrams or drawings that relate to the design or service of the units or common property of the strata plan;
- (d) a copy of any contract entered into by the corporation that relate to the common property of the strata plan;
- (e) any warranty that relates to the common property of the strata plan;
- (f) the corporation's seal;
- (g) any other document that relates to the units or common property of the strata plan.

1.5 - General meetings other than annual general meetings

- (1) The executive committee of an owners' corporation may call a general meeting, by notice under section 1.6, whenever it considers appropriate.
- (2) Subsection (3) applies if the executive committee of an owners' corporation receives a written request (a meeting request), stating the matters to be considered at the meeting, from people who are entitled to vote on all motions for units whose combined unit entitlement is at least 1/4 of the total unit entitlement in the strata plan.
- (3) The executive committee must hold a general meeting, by notice under section 1.6, within 28 days after the day it receives the meeting request.

1.6 - Notice of general meetings

- (1) The executive committee of an owners' corporation must give notice of a general meeting to—
 - (a) each member of the corporation; and
 - (b) each mortgagee's representative (if any).
- (2) The executive committee must give notice of the general meeting—
 - (a) so that the notice would reasonably be expected to be received at least 14 days before the date fixed for the meeting; or
 - (b) if a motion is to be moved that requires an unopposed or unanimous resolution—so that the notice would reasonably be expected to be received at least 21 days before the date fixed for the meeting.

1.7 - Requirements for notice of general meetings

- (1) A notice of a general meeting for an owners corporation must state —
 - (a) the time, date and place fixed for the meeting; and
 - (b) whether the person notified is entitled to vote on all (or any) motions at the meeting, and if not, why not; and
 - (c) for a member who is not entitled to vote on any motion because a mortgagee voting notice has been given—details of the notice, including the full name and address for correspondence of the mortgagee's representative; and
 - (d) if a motion is to be moved that requires an unopposed or unanimous resolution—the text of the motion and the kind of resolution.
- (2) For a notice of a general meeting given to a person entitled to vote on any motion, the notice must include—
 - (a) a proxy form approved by the executive committee; and
 - (b) an absentee voting paper for the motion in a form approved by the executive committee.
- (3) For a notice of an annual general meeting, the notice must include a copy of the following:
 - (a) the annual financial statements of the corporation to be presented at the meeting;
 - (b) the general fund budget.

1.8 - Defective notice of meetings

- (1) The proceedings at a general meeting are not invalid only because a person did not receive proper notice of the meeting.
- (2) However, if a person did not receive notice of the meeting in accordance with section 1.6(2), the person may make a request for the adjournment of the meeting by written notice to the executive committee before the day or time fixed for the start of the meeting.
- (3) A request by a person under subsection (2) may be made by someone else on the person's behalf.
- (4) If the executive committee receives a request for adjournment under subsection (2), the committee must give the request to the chairperson of the meeting immediately after the chairperson is elected.
- (5) The chairperson may adjourn the meeting to a time, date and place to be decided (by ordinary resolution) by the people present and entitled to vote on all motions at the meeting if the chairperson considers on reasonable grounds that—

- (a) notice of the meeting in accordance with section 1.6(2) was not given to the person by or for whom the request was made; and
- (b) in the circumstances, it would be unfair to allow the meeting to go ahead at present.

1.9 - Quorum at a general meeting – owners' corporation with 3 or more members

- (1) A motion may be considered at a general meeting of an owners' corporation with 3 or more members only if there is present—
 - (a) a quorum (a standard quorum) made up by people entitled to vote (on the motion) in relation to not less than $\frac{1}{2}$ the total number of units; or
 - (b) a quorum (a reduced quorum) made up under subsection (2).
- (2) If a standard quorum is not present within 30 minutes after the motion arises for consideration, a reduced quorum for the motion and any subsequent motion considered at the meeting is made up by 2 or more people present at the meeting who are entitled to vote on the motion.
- (3) If a reduced quorum is not present 30 minutes after the motion arises for consideration, the meeting is adjourned to the same day in the next week at the same place and time.
- (4) If a reduced quorum is present for the consideration of any motion and the motion is voted on, section 1.10 (Notice of reduced quorum decisions and adjournments) applies to the decision on the motion.
- (5) If a reduced quorum is present for the consideration of any motion and the motion is not voted on, the meeting may decide to adjourn to the same day in the next week at the same place and time to consider the motion (and any others remaining to be considered).
- (6) If a general meeting is adjourned under this section (including paragraph (c)) and a standard quorum is not present within $\frac{1}{2}$ an hour after a motion arises for consideration at the adjourned meeting—
 - (a) a reduced quorum is made up by the people who are then present and entitled to vote on the motion and any subsequent motion considered at the adjourned meeting; and
 - (b) if a reduced quorum is present for the consideration of any motion at the adjourned meeting, and the motion is voted on—the decision on the motion must be notified under section 1.10; and
 - (c) if the motion (or any other) is not voted on at the adjourned meeting—the adjourned meeting may resolve to adjourn again to the same day in the next week at the same place and time to consider the resolution (and any others remaining to be considered at the meeting).

1.10 - Notice of reduced quorum decisions and adjournments

- (1) If a decision (a *reduced quorum decision*) is made on a motion while a reduced quorum was present for the consideration of the motion, within 7 days after the meeting the owners corporation must give each person mentioned in section 1.6(1) (Notice of general meetings) written notice of the reduced quorum decision.
- (2) Within 4 days after a general meeting is adjourned under section 1.9, the owners' corporation must give each person mentioned in section 1.6(1) a written notice of the date, place and time to which the meeting is adjourned.
- (3) A reduced quorum decision is disallowed if, within 28 days after the decision was made, the owners corporation is given a petition requiring that the decision be disallowed

signed by a majority of people entitled to vote on the relevant motion at the time of signing (whether or not they were present or entitled to vote on the motion at the general meeting at which the decision was made).

- (4) If, within 28 days after a reduced quorum decision is made, a motion is passed confirming the reduced quorum decision while a standard quorum is present at a general meeting for consideration of the confirmation motion, the reduced quorum decision takes effect on confirmation, whether or not a petition under subsection (3) is at any time given to the owners' corporation.
- (5) This section does not prevent a reduced quorum decision from being revoked at a general meeting, whether a standard quorum or reduced quorum is present while the revocation motion is being considered.

1.11 - Quorum at a general meeting – owners' corporation with 2 members

- (1) A motion may only be considered at a general meeting of an owners' corporation with 2 members if a quorum constituted by all people entitled to vote on the motion is present.
- (2) If a quorum is not present within 30 minutes after the motion arises for consideration, the meeting is adjourned to the same day in the next week at the same place and time.

1.12 - Chairperson at a general meeting

- (1) The chairperson of a general meeting is the chairperson of the executive committee, unless that person—
 - (a) is not present at the meeting; or
 - (b) does not wish to be chairperson of the meeting.
- (2) If the executive committee's chairperson is not present at the general meeting, at the beginning of the meeting, the people present and entitled to vote may elect someone else who is present and entitled to vote as chairperson for the meeting.
- (3) The chairperson for the meeting may leave the chair during the meeting for any reason.
- (4) If the chairperson leaves the chair during the meeting, the people present and entitled to vote must elect another person present and entitled to vote as chairperson.

PART 2 - RESOLUTIONS AT GENERAL MEETINGS

1.13 - Decision-making at general meetings

- (1) Decisions at general meetings must be made by ordinary resolution, unless this Act requires otherwise.
- (2) If, at a general meeting, an owners' corporation makes a resolution of a particular kind (that is, an ordinary, special, unopposed or unanimous resolution), a resolution of the same kind at a general meeting is required to amend or revoke the earlier resolution, unless this Act requires otherwise.

1.14 - Ordinary resolutions

- (1) For an owners' corporation with more than 2 members, the requirement for passing an ordinary resolution at a general meeting is that—
 - (a) unless a poll is taken—the number of votes cast in favour of the resolution is greater than the number of votes cast against it; or
 - (b) on a poll—the voting value of votes cast in favour of the resolution is greater than the voting value of the votes cast against it.

1.15 - Special resolutions

- (1) For an owners' corporation with more than 2 members, the requirements for passing a special resolution at a general meeting are that—
 - (a) unless a poll is taken—
 - i) the number of votes cast in favour of the resolution is greater than the number of votes cast against it; and
 - ii) the votes cast against the resolution number less than 1/3 of the total number of votes that can be cast on the resolution by people present at the meeting (including proxy votes); or
 - (b) on a poll -
 - i) the voting value of votes cast in favour of the resolution is greater than the voting value of the votes cast against it; and
 - ii) the voting value of votes cast against the resolution is less than 1/3 of the voting value of the total number of votes that can be cast on the resolution by people present at the meeting (including proxy votes).
- (2) For an owners' corporation with 1 or 2 members, the requirements for passing a special resolution at a general meeting are that—
 - (a) no votes are cast against the resolution; and
 - (b) at least 1 vote is cast in favour of the resolution.

1.16 - Unopposed resolutions

The requirements for passing an unopposed resolution at a general meeting are that—

- (a) no votes are cast against the resolution; and
- (b) at least 1 vote is cast in favour of the resolution.

1.17 - Unanimous resolutions

- (1) For an owners' corporation with more than 2 members, the requirements for passing a unanimous resolution at a general meeting are that—
 - (a) each person entitled to vote on the resolution—
 - i) is present at the meeting; or
 - ii) has given another person present at the meeting a proxy permitting the person to vote on the resolution; or
 - iii) as cast an absentee vote on the resolution; and
 - (b) no votes are cast against the resolution; and
 - (c) at least 1 vote is cast in favour of the resolution.
- (2) For an owners' corporation with 1 or 2 members, the requirements for passing a unanimous resolution at a general meeting are that—
 - (a) no votes are cast against the resolution; and
 - (b) at least 1 vote is cast in favour of the resolution.

1.18 Evidence of resolutions of owners' corporation

Evidence of the following facts about a resolution of an owners' corporation may be given by a certificate sealed with the corporation's seal:

- (a) the fact that at a general meeting held on a stated date a resolution in the terms set out in the certificate was passed;
- (b) the fact that the resolution was an ordinary, special, unopposed or unanimous resolution.

PART 3 - VOTING AT GENERAL MEETINGS

1.19 - Who is entitled to vote?

- (1) The people entitled to vote on a motion at a general meeting of an owners' corporation are as follows:
 - (a) for a unit owned by a single individual—the unit owner;
 - (b) for a unit owned by a single company—the company's representative;
 - (c) for a unit owned by 2 or more part-owners—the part-owners' representative.
- (2) However, if a unit is subject to a mortgage and a mortgagee voting notice is in force for the unit, the person entitled to vote for the unit is the mortgagee's representative rather than the relevant person mentioned in subsection (1).
- (3) If the owners' corporation has 3 or more members, a person is only entitled to vote for a unit on a motion requiring an ordinary or special resolution if all amounts payable to the owners' corporation for the unit have been paid.
- (4) In addition, a person is not entitled to vote on a motion at a general meeting if a court order requires the person to not vote on the motion or at the meeting.

1.20 - General meeting – decisions about staged development

- (1) This section applies to a motion at a general meeting of an owners' corporation for a staged development if the development has not been completed.
- (2) The people entitled to vote on the motion are as follows:
 - (a) if the motion is only about an uncompleted stage of the development—the people entitled to vote under section 1.20 in relation to units in the uncompleted stages of the development;
 - (b) if the motion is only about a completed stage of the development—the people entitled to vote under section 1.20 in relation to units in the completed stages of the development;
 - (c) in any other case—the people entitled to vote under section 1.20.

1.21 - One vote – 1 unit

A single vote is exercisable for each unit at a general meeting.

1.22 - Voting by mortgagees

- (1) If the interest of a unit owner is subject to a mortgage, the mortgagee may give the owners corporation written notice (a mortgagee voting notice) that—
 - (a) the unit is subject to the mortgage; and
 - (b) the mortgagee proposes to exercise the voting right given under section 1.20 (2); and
 - (c) an individual named in the notice (the mortgagee's representative) is authorised to vote at general meetings for the unit on behalf of the mortgagee, instead of the person otherwise entitled to vote for the unit.
- (2) The mortgagee voting notice must state the full name and address for correspondence of the mortgagee's representative.
- (3) If a unit is owned by 2 or more part-owners, and the interest of 1 of the owners who has more than a ½ share in the unit is subject to a mortgage, the mortgagee may give a mortgagee voting notice under this section.
- (4) If the interest of a unit owner is subject to 2 or more mortgages, this section applies only to the mortgagee whose mortgage has priority.

1.23 - Mortgagee voting notice – amendment and revocation

- (1) The mortgagee may change the mortgagee's representative by written notice to the owners' corporation.
- (2) The notice of change of representative must—
 - (a) include the full name and an address for correspondence of the new representative; and
 - (b) be signed by the mortgagee.
- (3) The mortgagee's representative may change the address for correspondence by written notice to the owners' corporation of the change.
- (4) The notice of change of address must be signed by the representative.
- (5) A mortgagee voting notice—
 - (a) is revoked when the mortgagee gives written notice of revocation to the owners corporation; or
 - (b) is taken to be revoked when the mortgage is discharged.
- (6) A mortgagee who has given a mortgagee voting notice to an owners corporation commits an offence if, without reasonable excuse, the mortgagee fails to give written notice to the corporation of the discharge of the mortgage within 14 days after the discharge.

Maximum penalty: K1 000.

1.24 - Evidence of mortgagee's entitlement to vote

Evidence of any of the following facts may be given by a certificate sealed with the owners' corporation's seal:

- (a) the fact that the authorisation of a named mortgagee's representative to vote for a stated unit was in force on a stated date;
- (b) the fact that a stated address for correspondence for a mortgagee's representative was the latest address for correspondence for the representative notified to the corporation on a stated date;
- (c) the fact that notice of the revocation of a mortgagee voting notice was given to the owners' corporation by a named mortgagee on a stated date;
- (d) the fact that notice of the discharge of a mortgage was given to the owners' corporation on a stated date.

1.25 - Proxy votes

- (1) Votes at a general meeting may be cast by proxy (whether or not a poll is demanded).
- (2) The appointment of a proxy must be in the form approved by the executive committee.
- (3) A person entitled to vote at a general meeting of an owners' corporation must not—
 - (a) appoint a proxy for more than 1 year after the day the appointment is made; or
 - (b) appoint a person as a proxy if the person is—
 - i) the manager; or
 - ii) a service contractor.

1.26 - Value of votes

- (1) Every vote at a general meeting is of equal value, unless a poll is taken.

- (2) On a poll, the value of each vote (the voting value) is the value that is proportional to the unit entitlement of the unit for which it is exercised.

1.27 - Polls

- (1) A poll may be demanded on an ordinary or special resolution at a general meeting by anyone present and entitled to vote at the meeting.
- (2) A demand for a poll may be withdrawn.
- (3) A poll may be taken in any way the chairperson considers appropriate.
- (4) The result of a poll—
 - (a) must be declared at the meeting by the chairperson as soon as it is worked out; and
 - (b) decides whether or not the resolution for which the poll was demanded has been carried.

1.28 - Voting by chairperson

At a general meeting, the chairperson may (whether or not a poll is demanded)—

- (a) exercise a deliberative vote as a member; and
- (b) if there is an equality of votes—also exercise a casting vote, unless the owners' corporation has only 2 members.

1.29 - Absentee votes

- (1) A person entitled to vote on a motion may cast an absentee vote on the motion by recording the vote on an absentee voting paper and giving it to the owners' corporation before the meeting begins.
- (2) The absentee voting paper must be in the form approved by the executive committee.
- (3) An absentee vote under this section is a valid vote.
- (4) A person who casts an absentee vote under this section is taken to be present at the general meeting at which the motion is moved (except for the purposes of making up a quorum) and to have voted on the resolution.

1.30 - People under 18 or under other legal disabilities

- (1) The right of a person to vote at a general meeting must not be exercised by the person if—
 - (a) the person is under 18 years old; or
 - (b) the person is under any other legal disability preventing the person from dealing with his or her property.
- (2) The right to vote of an incapacitated person (under subsection (1)) may be exercised—
 - (a) if the person is under 18 years old—by the person's parent or guardian; or
 - (b) if the person is under any other legal disability—by a person for the time being authorised by law to control the person's property.

1.31 - Declaration by chairperson of result of voting

- (1) A declaration by the chairperson of the meeting that a motion has been passed is conclusive evidence of the fact without proof of the number or proportion of votes recorded against or in favour of the motion.
- (2) Subsection (1) does not apply if—

- (a) a poll is demanded; or
- (b) a unanimous resolution is required.

Draft only - for public consultation

SCHEDULE 3 DEFAULT RULES

R1 Definitions – Default Rules

(1) In these rules:

"executive committee representative" means a person authorised in writing by the executive committee under rule 10(4).

"owner, occupier or user", of a unit, includes an invitee or licensee of an owner, occupier or user of a unit.

(2) A word or expression in the Act has the same meaning in these Rules.

R2 Payment of rates and taxes by unit owners

A unit owner must pay all rates, taxes and any other amount payable for the unit.

R3 Repairs and maintenance

(1) A unit owner must ensure that the unit is in a state of good repair.

(2) A unit owner must carry out any work in relation to the unit, and do anything else in relation to the unit, that is required by a national or provincial law.

R4 Erections and alterations

(1) A unit owner may erect or alter any structure in or on the unit or the common property only—

(a) in accordance with the express permission of the owners corporation by unopposed resolution; and

(b) in accordance with the requirements of any applicable national or provincial law (for example, a law requiring development approval to be obtained for the erection or alteration).

(2) Permission may be given subject to conditions stated in the resolution.

R5 Use of common property

A unit owner must not use the common property, or permit it to be used, to interfere unreasonably with the use and enjoyment of the common property by an owner, occupier or user of another unit.

R6 Hazardous use of unit

A unit owner must not use the unit, or permit it to be used, so as to cause a hazard to an owner, occupier or user of another unit.

R7 Use of unit – nuisance or annoyance

(1) A unit owner must not use the unit, or permit it to be used, in a way that causes a nuisance or substantial annoyance to an owner, occupier or user of another unit.

(2) This rule does not apply to a use of a unit if the executive committee has given an owner, occupier or user of the unit written permission for that use.

(3) Permission may be given subject to stated conditions.

(4) Permission may be withdrawn by special resolution of the owners corporation.

R8 Noise

- (1) A unit owner must not make, or permit to be made, such a noise within the unit as might (in the circumstances) be reasonably likely to cause substantial annoyance to an owner, occupier or user of another unit.
- (2) This rule does not apply to the making of a noise if the executive committee has given the person responsible for making the noise written permission to do so.
- (3) Permission may be given subject to stated conditions.
- (4) Permission may be withdrawn by special resolution of the owners corporation.

R9 Illegal use of unit

A unit owner must not use the unit, or permit it to be used, to contravene a national or provincial law in force.

R10 What may an executive committee representative do?

- (1) An executive committee representative may do any of the following in relation to a unit at all reasonable times:
 - (a) if the committee has reasonable grounds for suspecting that there is a breach of the Act or these rules in relation to a unit—inspect the unit to investigate the breach;
 - (b) carry out any maintenance required under the Act or these rules;
 - (c) do anything else the owners corporation is required to do under the Act or these rules.
- (2) An executive committee representative may enter a unit and remain in the unit for as long as is necessary to do something mentioned in subrule (1).
- (3) An executive committee representative is not authorised to do anything in relation to a unit mentioned in subrule (1) unless—
 - (a) the executive committee or the representative has given the owner, occupier or user of the unit reasonable notice of his or her intention to do the thing; or
 - (b) in an emergency, it is essential that it be done without notice.
- (4) The executive committee may give a written authority to a person to represent the corporation under this rule.

R11 Seal of owners' corporation

For the attaching of the seal of the owners' corporation to a document to be effective—

- (a) the seal must be attached by decision of the executive committee; and
- (b) the seal must be attached in the presence of 2 executive members; and
- (c) the executive members witnessing the attaching of the seal must sign the document as witnesses.