

ACTS SUPPLEMENT

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Act 4

Condominium Property Act

2001

THE CONDOMINIUM PROPERTY ACT, 2001.

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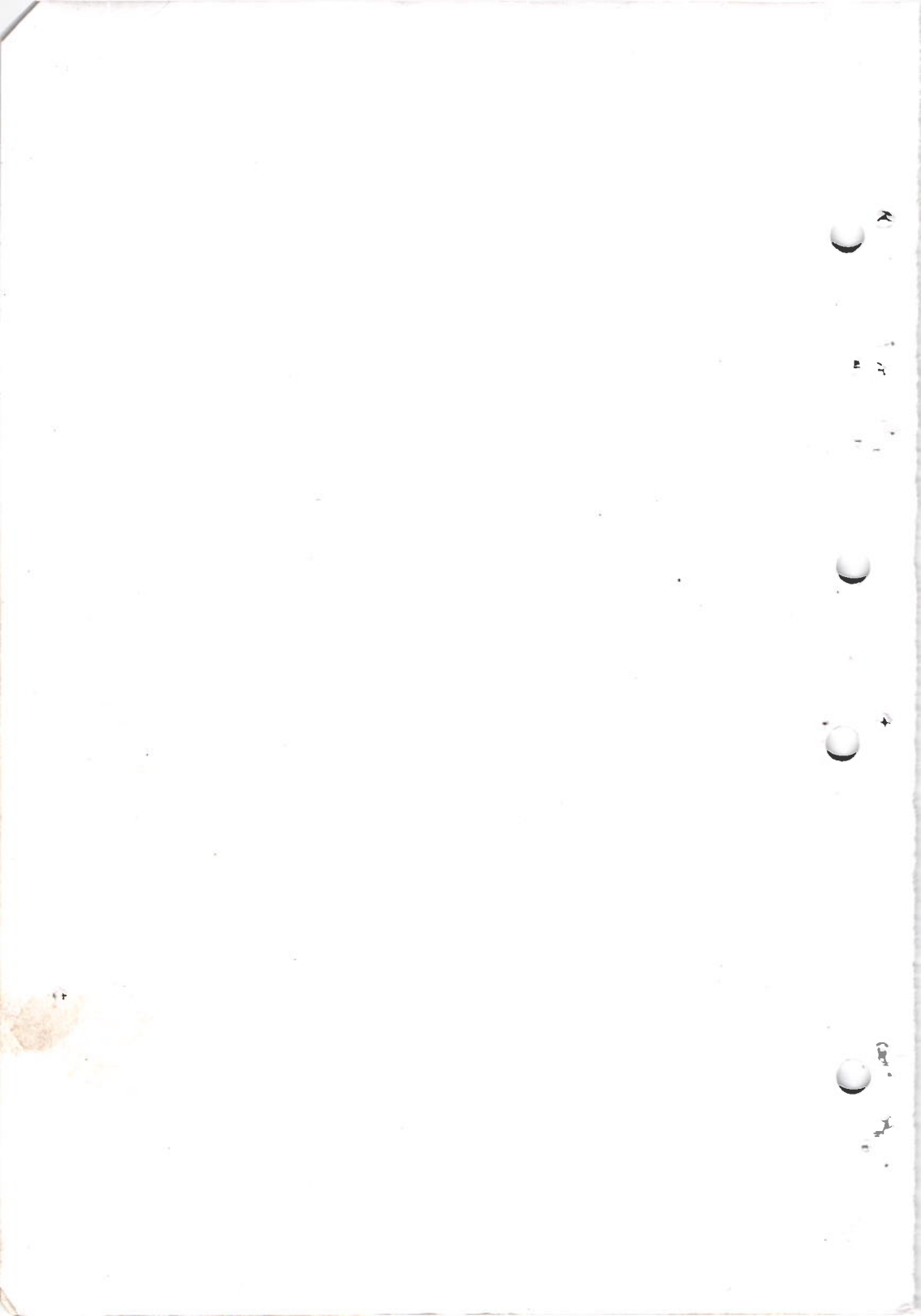
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THE CONDOMINIUM PROPERTY ACT, 2001.

An Act to provide for the division of buildings into units and common property; to provide for individual ownership of those units by issuance of certificates of title in relation to the units; to provide for ownership of common property by proprietors of units as tenants in common; to provide for the use and management of the units and common property and for other connected matters.

DATE OF ASSENT: 12th February, 2001.

Date of commencement: 23rd February, 2001.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. This Act may be cited as the Condominium Property Act, 2001. Shor. title.

2. In this Act, unless the context otherwise requires— Inter-pretation.

“annual general meeting” means a meeting convened in accordance with section 28;

“armotisation period” means the period within which all liabilities in respect of a charge must be discharged;

“board” means a management board elected under section 26;

“building” means—

- (a) any structure, whether of a temporary or permanent nature, and, irrespective of the materials used in its erection, erected or used for or in connection with—
 - (i) accommodation or convenience of human beings or animals;
 - (ii) the manufacture, processing, storage or sale of any goods;
 - (iii) the rendering of any service;
 - (iv) the destruction or treatment of refuse or other waste material;
 - (v) the cultivation or growing of any plant or crop;
- (b) a swimming pool, reservoir, bridge, tower or any other structure connected with it;
- (c) a fuel pump or tank used in connection with the pump;
- (d) an electrical installation or any other installation connected with it;
- (e) gas supply installation or any installation connected with it; and
- (f) any other part of a building or installation connected to the building;

“certificate of title” means a certificate of title issued under section 4;

“chairperson” means the chairperson of a board;

“charge” includes a mortgage;

- “common property” means that part of the condominium property which does not belong to any specific unit and which is used in common by the owners of the units and includes, without prejudice to the general effect of the foregoing, the land on which the property is situated, support structures, infrastructure and services;
- “condominium” means a system of separate ownership of individual units in a multiple-unit building, the individual units of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those units;
- “condominium plan” means a plan registered in accordance with this Act and includes a phased condominium plan;
- “corporation” means a corporation established under section 20;
- “court” means a court of competent jurisdiction and includes tribunals established under the Land Act, 1998;
- “currency point” has the value assigned to it in the First Schedule;
- “developer” means a person who, whether alone or in conjunction with another person develops, sells or offers for sale to the public, units or proposed units;
- “developer’s management agreement” means a management agreement entered into by a corporation at a time when the majority of units are owned by a developer;

“document” includes a summons, notice, tax notice, order and other legal process;

“easement” means a right attached to one particular piece of land which allows the owner of that land either to use the land of another person in a particular manner or to restrict its use by that other person to a particular extent but which does not allow him or her to take any part of its natural produce or its soil, and includes a right of way, a right to draw water, a right to place erections such as sign posts, a right of light and a right of support to a building and any other rights provided by any law in force;

“landlord” means the owner of a unit that is being rented and includes a person acting on behalf of the owner;

“local authority” means a District, subcounty, municipal, division or town council and includes a public officer authorised by a local authority;

“management agreement” means an agreement entered into by a corporation governing the management of—

(a) the movable and immovable property of the corporation associated with the units; and

(b) the common property associated with the units;

“Managing agent” means a person appointed by the Management Board under section 29 to manage the units, the moveable and immoveable property of the corporation and the common property, and the day to day affairs of the corporation;

“Minister” means the Minister to whom the functions of the Minister under this Act have for the time being been assigned by the President;

“ordinary resolution” means a resolution—

(a) passed at a properly convened meeting of a corporation by a simple majority of all persons entitled to vote; or

(b) signed by a simple majority of all persons who, at a properly convened meeting of a corporation, would be entitled to vote;

“owner” means a person who is registered as the owner of—

(a) freehold estate in a unit; or

(b) mailo estate in a unit; or

(c) the leasehold estate in a unit where the parcel on which the unit is located is held under a lease;

“parcel” means the land comprised in a condominium plan;

“planning authority” means the planning authority for the time being responsible for planning in the area;

“proprietor” means—

(a) in relation to land or a lease, the person named in the Register as the proprietor of the land or lease; and

(b) in relation to any unit, the person who is registered as proprietor of an estate in the unit;

“rating authority” has the meaning assigned to it under the Local Government (Rating) Decree, 1979;

“recreational agreement” means any agreement concerning recreational facilities to be used by a person occupying a unit;

Cap. 205.

“Register” has the same meaning as Register Book in the Registration of Titles Act;

Cap. 205.

“Registrar” means a registrar appointed under the Registration of Titles Act;

“regulations” means regulations made by the Minister under section 56;

“rules” means the rules made by a corporation under section 30;

“sale agreement” means an agreement with a developer by which a person purchases a unit or proposed unit or acquires a right to purchase a unit or proposed unit;

“special resolution” means a resolution—

(a) passed at a properly convened meeting of a corporation by a majority of not less than seventy-five percent of all the persons entitled to vote and representing not less than seventy five percent of the total unit factors for all the units; or

(b) signed by not less than seventy-five percent of all the persons who, at a properly convened meeting of a corporation, would be entitled to vote and representing not less than seventy-five percent of all the total unit factors for all the units;

“tenancy in common” means a holding of land where two or more persons have interests in the same land, accruing under different titles; or accruing under the same title, but at different periods, or

conferred by words of limitation importing that the tenants are to take in distinct shares which are severable;

“unanimous resolution” means a resolution supported by all owners of units;

“unit” means a space that is situated within a building and described in a condominium plan by reference to floors, walls and ceilings within the building;

“unit factor” means the unit entitlement of a condominium plan and indicates the share of an owner in the common property, common facilities and other assets of the corporation and is the figure which determines the owner’s contribution to the common expenses of a corporation and may be determined in accordance with the bye-laws of the corporation using such variables as the size of the unit, location of the unit and the view which the unit commands.

PART II—DIVISION OF BUILDING INTO UNITS AND REGISTRATION OF CONDOMINIUM PROPERTIES.

3. (1) A proprietor or developer of an existing or planned building may divide the building into two or more units by registering with the Registrar a condominium plan in accordance with this Act.

Division of building into units.

(2) The condominium plan shall be presented for registration in quadruplicate and shall indicate the number of units into which the building is divided.

(3) The developer in depositing a plan with the Registrar under subsection (1) may indicate whether the plan will be developed at once or in successive phases.

(4) Where a plan is to be developed in phases, it shall be known as a phased condominium plan.

(5) Where the developer deposits a phased condominium plan in accordance with subsections (1) and (3), the developer shall indicate a time-table for the development of the various phases.

4. (1) The Registrar shall, upon an application for registration of a condominium plan, close the part of the Register relating to the parcel described in the plan, and open a separate part for each unit described in the plan, and shall, upon the payment of the prescribed fee, issue a certificate of title in respect of the unit.

(2) The Registrar shall preserve the closed part of the Register referred to in subsection (1).

5. (1) The provisions of the Registration of Titles Act relating to registration techniques, procedures and practices shall, unless otherwise provided in this Act, apply to the registration of land dealings under this Act.

(2) A certificate of title issued in respect of a unit comprised in a condominium plan registered under this Act shall, upon registration of the plan, be deemed to have been issued under the Registration of Titles Act.

(3) A proprietor of a unit in respect of which part of the Register is opened under section 4 may, subject to this Act, sell, transfer, lease, charge, or otherwise deal with that unit in the same manner and form as land held under the Registration of Titles Act.

6. (1) Any interests affecting the parcel which were entered on the part of the Register closed under section 4 shall be endorsed on the separate parts opened under that section and on the certificates of title issued under that section to the extent of the unit factor.

(2) Any interest affecting a unit comprised in a condominium plan registered under section 4 but not endorsed on the separate part of the Register shall be endorsed on the separate part of the Register of the unit opened under section 4 and on the certificate of title issued in respect of that unit.

Register of
condomi-
nium
property,
etc.

Application
of the
Registration
of Titles
Act.
Cap. 205.

Cap. 205.

Cap. 205.

Entering of
interests on
Register of
units, *etc.*

7. (1) The Registrar shall, upon opening a separate part of the Register for a unit under section 4, record in that part the unit factor, and shall record that unit factor on the certificate of title issued in respect of the unit.

(2) The common property comprised in a registered condominium plan shall be held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

(3) Subsection (2) of this section shall apply as if there were different owners for each of the units where, prior to the sale, the developer is the owner of all the units.

(4) A share in the common property shall not, subject to this Act, be disposed of or become subject to a charge except as appurtenant to the unit of an owner.

(5) A disposition of, or a charge on a unit shall operate to dispose of or charge that share in the common property without express reference to it.

8. (1) A proprietor of a unit may, in accordance with this Act, and with the approval of a local authority, subdivide or consolidate his or her unit by registering with the Registrar a condominium plan relating to the unit intended to be subdivided or consolidated.

Subdivision
of units, etc.

(2) Except as provided in this section, the provisions of this Act relating to condominium plans shall apply with all necessary modifications to a sub-division or consolidation of units.

(3) A unit comprised in a condominium plan of sub-division or consolidation shall, upon the registration of a condominium plan of sub-division or consolidation, be subject to the burden and have the benefit of any easements that affect units in the original condominium plan.

(4) There shall be indicated in the schedule accompanying a condominium plan of subdivision or consolidation, the apportionment among the units and the unit factor for the unit or units in the original condominium plan.

(5) The Registrar shall, before accepting to register a proposed condominium plan of subdivision or consolidation, amend the original condominium plan in accordance with regulations made under this Act.

(6) Upon registration of a condominium plan of subdivision or consolidation, the land comprised in it shall not be dealt with by reference to units in the original condominium plan.

Change of
use of unit.

9. (1) An owner of a unit shall not change the use of his or her unit unless—

(a) the corporation has, by unanimous approval, consented to the change of use; and

(b) the planning and local authorities have approved the change of use.

(2) An owner of a unit shall, where the change of use of a unit under this section results in modifications to the condominium plan, submit to the Registrar, a modified condominium plan.

(3) The Registrar shall, on receipt of a modified condominium plan under subsection (2) append the plan as an annex to the condominium plan of the condominium property registered under section 4.

10. (1) The Registrar shall not register a plan as a condominium plan unless—

(a) that plan, in its heading, is described as a condominium plan;

Condomi-
nium plan
to conform
to certain
require-
ments.

- (b) there is indicated in that plan, a delineation of the external surface boundaries of the parcel and the location of the building in relation to them;
- (c) the plan includes a drawing illustrating the units and distinguishing the units by numbers or other symbols;
- (d) the boundaries of each unit are clearly defined in the plan;
- (e) the approximate floor area of each unit is clearly shown in the plan;
- (f) the plan is accompanied by a schedule specifying in whole numbers the unit factor for each unit in the parcel;
- (g) the plan is accompanied by a statement containing such particulars as are necessary to identify the title to the parcel;
- (h) the plan is accompanied by the certificates referred to in section 11;
- (i) the plan is signed by the proprietor;
- (j) the plan contains the address at which documents are to be served on the relevant corporation in accordance with section 54; and
- (k) the plan contains any other particulars prescribed by or under regulations.

(2) In the case of a condominium plan that includes residential units, there shall be indicated in that plan, in addition to conforming to the requirements specified in subsection (1) and to the satisfaction of the Registrar, a delineation of the boundaries of the areas that are to be leased under section 5 (3).