

New South Wales



ANNO DECIMO

ELIZABETHÆ II REGINÆ

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Act No. 17, 1961.

An Act to facilitate the subdivision of land in strata and the disposition of titles thereto; to amend the Conveyancing Act, 1919, the Local Government Act, 1919, the Land Tax Management Act, 1956, and certain other Acts, in certain respects; and for purposes connected therewith. [Assented to, 27th March, 1961.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Conveyancing (Strata Titles) Act, 1961".

Short title and commencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

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Interpreta-  
tion.

2. In this Act unless the context or subject matter otherwise indicates or requires—

“Body corporate” means body corporate incorporated by section fourteen of this Act.

“Building” means the building or buildings shown in a strata plan.

“Common property” means so much of the land for the time being comprised in a strata plan as is not comprised in any lot shown in such plan.

“Council” means council of a body corporate constituted under the First Schedule to this Act.

“Land” means land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, held by the registered proprietor under perpetual lease from the Crown or in fee simple.

“Local council” means in relation to a parcel the council of the area under the Local Government Act, 1919, as amended by subsequent Acts, in which the parcel is situated.

“Lot” means lot shown as such in a strata plan.

“Mortgage” includes a charge for securing money or money’s worth.

“Parcel” means the land comprised in a strata plan.

“Proprietor” means the proprietor for the time being of a lot.

“Strata plan” means a plan which—

- (a) is described in the title or heading thereto as a strata plan;
- (b) shows the whole or any part of the land comprised therein as being divided into two or more strata, whether or not any such stratum is divided into two or more lots; and
- (c) complies with the requirements of section four of this Act,

and includes a plan of re-subdivision of any lots in a strata plan registered under this Act.

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“The Court” means the Supreme Court in its equitable jurisdiction.

“Unanimous resolution” means a resolution unanimously passed at a duly convened meeting of the body corporate at which all persons entitled to exercise the powers of voting conferred by or under this Act are present personally or by proxy at the time of the motion.

“Unit entitlement” in respect of a lot means the unit entitlement of that lot, specified or apportioned in accordance with the provisions of section eighteen or paragraph (e) of subsection four of section twenty of this Act, as the case may be.

3. (1) Land may be subdivided into lots by registering a **Subdivision**, strata plan in the manner provided by or under this Act.

(2) When a plan has been so registered the lots comprised therein, or any one or more thereof, may devolve or be transferred, leased, mortgaged, or otherwise dealt with in the same manner and form as any land held under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

(3) (a) Subject to the provisions of this section, any transfer, lease, mortgage or other dealing affecting a lot shall have the same effect as a similar dealing affecting a lot in a plan of subdivision registered pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts.

(b) A strata plan shall, for the purposes of the Real Property Act, 1900, as amended by subsequent Acts, be deemed upon registration to be embodied in the register book; and notwithstanding the provisions of that Act, as so amended, a proprietor shall hold his lot and his share in the common property subject to any interests affecting the same for the time being notified on the registered strata plan and subject to any amendments to lots or common property shown on that plan.

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(4) Section eighty-eight of the Conveyancing Act, 1919, as amended by subsequent Acts, shall not apply to easements or restrictions as to user implied or created by this Act and such easements and restrictions shall take effect and be enforceable without any memorial or notification on folia of the register book constituting titles to the dominant or servient tenements and without any express indication of those tenements.

Strata plan.

4. (1) A strata plan shall—

- (a) delineate the external surface boundaries of the parcel and the location of the building in relation thereto;
- (b) bear a statement containing such particulars as may be necessary to identify the title to such parcel;
- (c) include a drawing illustrating the lots and distinguishing such lots by numbers or other symbols;
- (d) define the boundaries of each lot in the building by reference to floors, walls, and ceilings, provided that it shall not be necessary to show any bearing or dimensions of a lot;
- (e) show the approximate floor area of each lot;
- (f) have endorsed upon it a schedule complying with the provisions of section eighteen of this Act;
- (g) have endorsed upon it the address at which documents may be served on the body corporate in accordance with section twenty-seven of this Act;
- (h) contain such other features as may be prescribed by regulations under this Act.

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

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(3) Every strata plan lodged for registration shall be endorsed with or accompanied by a certificate—

- (a) of a surveyor registered under the Surveyors Act, 1929, as amended by subsequent Acts, that the building shown on the strata plan is within the external surface boundaries of the parcel the subject of the strata plan and where eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel;
- (b) of the town or shire clerk of the local council that the proposed subdivision of the parcel, as illustrated in the strata plan, has been approved by the local council; and
- (c) pursuant to section 317A of the Local Government Act, 1919, as amended by subsequent Acts, in respect of the building.

5. (1) In respect of each lot there shall be implied— **Support.**

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

(2) The provisions of section 181B of the Conveyancing Act, 1919, as amended by subsequent Acts, shall not be capable of applying to walls of a building other than walls erected or to be erected on an external boundary of a parcel.

6. (1) Every proprietor shall be entitled to have his lot **Shelter.** sheltered by all such parts of the building as are capable of affording shelter.

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

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(3) The easement for shelter created by this section shall entitle the proprietor of the dominant tenement to enter on the servient tenement to replace, renew or restore any shelter.

**Services.**

7. In respect of each lot there shall be implied—

- (a) in favour of the proprietor of such lot, and as appurtenant thereto, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of such lot;
- (b) as against the proprietor of such lot, and to which the same shall be subject, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being existing within such lot, as appurtenant to the common property and also to every other lot capable of enjoying such easements.

**Ancillary rights.**

8. All ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of easements implied or created by this Act.

**Ownership of common property.**

9. (1) The common property shall be held by the proprietors as tenants in common in shares proportional to the unit entitlement of their respective lots.

(2) The Registrar-General in issuing a certificate of title for a lot shall certify therein the proprietor's share in the common property.

(3) Save as in this Act provided, no share in the common property shall be disposed of except as appurtenant to the lot of the proprietor and any assurance of a lot shall operate to assure the share of the disposing party in the common property, without express reference thereto.



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10. (1) The proprietors by unanimous resolution may direct the body corporate to transfer or lease common property, or any part thereof. Dispositions  
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common  
property.

(2) The body corporate, if it is satisfied that the resolution was duly passed, and that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have, in the case either of a transfer or a lease, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer or, in the case of a lease, have approved in writing of the execution of the proposed lease, shall execute the appropriate transfer or lease and the transfer or lease shall be valid and effective without execution by any person having an interest in the common property, and the receipt of the body corporate for the purchase money, rent, premiums, or other moneys payable to the body corporate under the terms of the transfer or lease shall be a sufficient discharge, and shall exonerate the persons taking under the transfer or the lessee, as the case may be, from any responsibility for the application of the moneys expressed to have been so received.

(3) Every such transfer or lease lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed, that the transfer or lease conforms with the terms thereof and that all necessary consents were given.

(4) In favour of purchasers of the common property and in favour of the Registrar-General the certificate shall be conclusive evidence of the facts stated therein.

(5) The Registrar-General shall register—

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

(b) the lease by noting it on the registered strata plan in the manner prescribed by regulations under this Act.

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(6) Upon lodgment for registration of a transfer of common property, the Registrar-General shall, before issuing a certificate of title, amend the registered strata plan by deleting therefrom the common property comprised in the transfer.

Disposition  
on destruction  
of  
the building.

**11.** (1) Upon destruction of the building the body corporate shall forthwith lodge with the Registrar-General a notification of such destruction in the form prescribed by regulations under this Act.

(2) Upon receipt of the notification referred to in subsection one of this section the Registrar-General shall make an entry thereof on the relevant registered strata plan in the manner prescribed by regulations under this Act.

(3) Upon such entry as aforesaid proprietors of lots in such strata plan shall be entitled to the parcel as tenants in common in shares proportional to the unit entitlement of their respective lots.

(4) The proprietors of all lots by unanimous resolution may direct the body corporate to transfer the parcel or any part or parts thereof.

(5) The body corporate, if it is satisfied that the resolution was duly passed, and that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate transfer, and the transfer shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the body corporate shall be a sufficient discharge, and shall exonerate the persons taking under the transfer from any responsibility for the application of the moneys expressed to have been so received.

(6) Every such transfer lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that all necessary consents were given.

(7) In favour of purchasers of the parcel and in favour of the Registrar-General the certificate shall be conclusive evidence of the facts stated therein.



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(8) Upon lodgment for registration of a transfer of a parcel by the body corporate pursuant to this section, the Registrar-General, before issuing a certificate of title shall make the entry prescribed by subsection two of this section.

(9) Where land is transferred by the body corporate pursuant to this section—

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

12. (1) The proprietors of all lots by unanimous resolution at a meeting convened by the body corporate may direct the body corporate—

Creation of  
easements  
and  
covenants.

- (a) to execute on their behalf a grant of easement or a restrictive covenant burdening the parcel;
- (b) to accept on their behalf a grant of easement or a restrictive covenant benefiting the parcel.

(2) The body corporate, if it is satisfied that the resolution was duly passed, and that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate transfer, or covenant, and the transfer, or covenant shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the body corporate shall be a sufficient discharge, and shall exonerate all persons taking under the transfer from any responsibility for the application of the moneys expressed to have been so received.

(3) Every such transfer, or covenant lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that all necessary consents were given.



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(4) In favour of persons dealing with the body corporate pursuant to this section and in favour of the Registrar-General the certificate shall be conclusive evidence of the facts stated therein.

(5) The Registrar-General shall register the instrument creating such easement, covenant or restriction by noting the same on the registered strata plan in the manner provided by regulations under this Act.

By-laws.

**13.** (1) The building shall be regulated by by-laws.

(2) The by-laws shall provide for the control, management, administration, use and enjoyment of the lots and the common property and shall include—

- (a) the by-laws set forth in the First Schedule to this Act which shall not be added to, amended or repealed except by unanimous resolution;
- (b) the by-laws set forth in the Second Schedule to this Act which may be added to, amended, or repealed by the body corporate.

Until by-laws are made in that behalf the by-laws set forth in the First Schedule and Second Schedule to this Act shall as on and from the registration of a strata plan be in force for all purposes in relation to the parcel and the lots and common property therein.

(3) No by-law or addition to or amendment or repeal of any by-law shall be capable of operating to prohibit or restrict the devolution of lots or any transfer, lease, mortgage or other dealing therewith or to destroy or modify any easement implied or created by this Act.

(4) No addition to or amendment or repeal of any by-law pursuant to paragraph (a) of subsection two of this section shall have effect until the body corporate shall have lodged a notification thereof in the form prescribed by regulation under this Act with the Registrar-General and until the Registrar-General shall have made reference thereto on the registered strata plan.

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(5) The body corporate shall on the application of a proprietor or any person authorised in writing by him make available for inspection the by-laws for the time being in force.

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

14. (1) (a) The proprietor or proprietors shall, by Management. virtue of this Act, upon registration of the strata plan be a body corporate under the name "The Proprietors—Strata Plan No.                   " (the number to be specified shall be the number of the relevant registered strata plan).

(b) In this subsection "proprietors" includes the persons entitled to the parcel pursuant to subsection three of section eleven of this Act.

(2) The provisions of the Companies Act, 1936, as amended by subsequent Acts, shall not apply to the body corporate.

(3) Subject to this Act the body corporate shall be responsible for enforcement of the by-laws and the control, management and administration of the common property.

(4) The body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in accordance with the by-laws for the time being in force.

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(5) The body corporate may—

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

Duties and powers of body corporate.

**15.** (1) The duties of the body corporate shall include the following :—

- (a) to insure and keep insured the building to the replacement value thereof against fire and such other risks as may be prescribed under this Act unless the proprietors by unanimous resolution otherwise resolve;
- (b) to effect such insurance as it is required by law to effect;
- (c) to insure against such other risks as the proprietors may from time to time determine by special resolution as defined in clause thirty-five of the First Schedule to this Act;
- (d) subject to section nineteen of this Act, forthwith to apply insurance moneys received by it in respect of damage to the building in rebuilding and reinstating the building so far as the same may lawfully be effected;
- (e) to pay premiums on any policies of insurance effected by it;
- (f) to keep in a state of good and serviceable repair and properly maintain the common property;
- (g) to comply with notices or orders by any competent public or local authority requiring repairs to, or work to be done in respect of, the parcel or the building,

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- (h) to comply with any reasonable request for the names and addresses of the persons who are members of the council of the body corporate.

The body corporate for the purpose of effecting any insurance under paragraph (a) of this subsection shall be deemed to have an insurable interest to the replacement value of the building and for the purpose of effecting any other insurance under this subsection shall be deemed to have an insurable interest in the subject matter of such insurance.

(2) The powers of the body corporate shall include the following:—

- (a) to establish a fund for administrative expenses sufficient in the opinion of the body corporate for the control, management and administration of the common property, for the payment of any premiums of insurance and the discharge of any other obligation of the body corporate;
- (b) to determine from time to time the amounts to be raised for the purposes aforesaid;
- (c) to raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective lots;
- (d) to recover from any proprietor by an action for debt in any court of competent jurisdiction any sum of money expended by the body corporate for repairs to or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building comprising the lot of that proprietor.

(3) (a) Subject to the provisions of paragraph (b) of this subsection, any contribution levied as aforesaid shall be due and payable on the passing of a resolution to that effect and in accordance with the terms of such resolution, and may be recovered as a debt by the body corporate in an action in any court of competent jurisdiction from the proprietor



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proprietor entitled at the time when such resolution was passed and from the proprietor entitled at the time when such action was instituted both jointly and severally.

(b) The body corporate shall on the application of a proprietor or any person authorised in writing by him certify—

- (i) the amount of any contribution determined as the contribution of the proprietor;
- (ii) the manner in which such contribution is payable;
- (iii) the extent to which such contribution has been paid by the proprietor; and
- (iv) the amount of any rate paid by the body corporate pursuant to section sixteen of this Act, and not recovered by it,

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

(4) The policy of insurance authorised by this section and taken out by the body corporate in respect of the building shall not be liable to be brought into contribution with any other policy of insurance save another policy authorised by this section in respect of the same building.

Recovery  
of rates.

16. (1) Where any rate levied in respect of a lot by any local or public authority is due and payable and the proprietor has made default in payment thereof, then such authority may serve upon the body corporate a copy of the notice of assessment of such rate together with a notice requiring the body corporate to pay the same within thirty days from the date of such service.

(2) If the body corporate fails to pay such rate within such period as aforesaid the said authority, without prejudice to its rights against any proprietor, may sue the body corporate for such rate as a debt in any court of competent jurisdiction and may exercise any other remedy available to the authority under any Act, regulation, or by-laws as if the body corporate were the sole proprietor of the parcel and the rate levied was the rate applicable to the parcel.

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(3) Where the body corporate pays any such rate it may recover the amount so paid in an action for debt in any court of competent jurisdiction from the person who is the proprietor of the lot in respect of which the rate was levied at the time when such action is instituted.

**17.** (1) Where a building is insured to its replacement **Insurance.** value a proprietor may effect a policy of insurance in respect of any damage to his lot in a sum equal to the amount secured, at the date of any loss referred to in such policy, by mortgages charged upon his lot.

Where any such policy of insurance is in force—

- (a) payment shall be made by the insurer under such policy to the mortgagees whose interests are noted thereon in order of their respective priorities, subject to the terms and conditions of the policy;
- (b) subject to the terms and conditions of such policy, the insurer shall be liable to pay thereunder—
  - (i) the value stated in such policy; or
  - (ii) the amount of the loss; or
  - (iii) the amount sufficient, at the date of the loss, to discharge mortgages charged upon the lot,whichever is the least amount;
- (c) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage charged upon the lot the insurer shall be entitled to an assignment of that mortgage;
- (d) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage charged upon the lot the insurer shall be entitled to a sub-mortgage of such mortgage to secure the

amount



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amount so paid on terms and conditions agreed upon as provided in subsection three of this section, or, failing agreement, on the same terms and conditions as those contained in the mortgage by the proprietor.

(2) (a) Where a building is uninsured, or has been insured to less than its replacement value, a proprietor may—

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

(b) For the purposes of this subsection, the amount for which a lot is insured under a policy of insurance effected in respect of the building shall be determined by multiplying the value stated in such policy by the unit entitlement of the lot and dividing the product so obtained by the sum of the unit entitlements of all lots.

(3) For the purposes of paragraph (d) of subsection one and of subparagraph (ii) of paragraph (a) of subsection two of this section, any insurer and mortgagee or mortgagees may at any time, whether before or after a policy of insurance has been effected by a proprietor, agree upon the terms and conditions of the sub-mortgage.

(4) Nothing in this section shall limit the right of a proprietor to insure against risks other than damage to his lot.

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(5) The policy of insurance authorised by this section and taken out by a proprietor in respect of damage to his lot shall not be liable to be brought into contribution with any other policy of insurance save another policy authorised by this section and taken out in respect of damage to the same lot.

(6) This section shall apply notwithstanding the provisions of the Life Assurance Act, 1774 (Imperial) (14 Geo. III c. 48), or any other law relating to insurance.

**18.** Every plan lodged for registration as a strata plan shall have endorsed upon it a schedule specifying in whole numbers the unit entitlement of each lot and a number equal to the aggregate unit entitlement of all lots, and such unit entitlement shall determine—

- (a) the voting rights of proprietors;
- (b) the quantum of the undivided share of each proprietor in the common property;
- (c) the proportion payable by each proprietor of contributions levied pursuant to subsection two of section fifteen of this Act.

**19.** (1) For the purposes of this Act the building is destroyed on the happening of the following events—

- (a) when the proprietors by unanimous resolution so resolve; or
- (b) when the Court is satisfied that having regard to the rights and interests of the proprietors as a whole it is just and equitable that the building shall be deemed to have been destroyed and makes a declaration to that effect.

(2) In any case where a declaration has been made pursuant to paragraph (b) of subsection one of this section the Court may by order impose such conditions and give such directions (including directions for the payment of money) as it thinks fit for the purpose of adjusting as between the body corporate and the proprietors and as amongst the proprietors themselves the effect of the declaration.

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(3) (a) Where the building is damaged but is not destroyed pursuant to subsection one of this section, the Court may by order settle a scheme, including provisions—

- (i) for the reinstatement in whole or in part of the building;
- (ii) for transfer or conveyance of the interests of proprietors of lots which have been wholly or partially destroyed to the other proprietors in proportion to their unit entitlement.

(b) In the exercise of its powers under this subsection the Court may make such orders as it deems necessary or expedient for giving effect to the scheme, including orders—

- (i) directing the application of insurance moneys received by the body corporate in respect of damage to the building;
- (ii) directing payment of money by the body corporate or by proprietors or by some one or more of them;
- (iii) directing such amendment of the strata plan as the Court thinks fit, so as to include in the common property any accretion thereto;
- (iv) imposing such terms and conditions as it thinks fit.

(4) For the purposes of this section an application may be made to the Court by the body corporate or by a proprietor or by a registered mortgagee of a lot.

(5) On any application to the Court under this section any insurer who has effected insurance on the building or any part thereof (being insurance against destruction of lots or damage to the building) shall have the right to appear in person or by agent or counsel.

(6) The Court may from time to time vary any order made by it under this section.

(7) (a) The Court on the application of the body corporate or any member thereof or the administrator may by order make provision for the winding up of the affairs of the body corporate.

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(b) By the same or subsequent order the Court may declare the body corporate dissolved as on and from a date specified in the order.

(8) On any application under this section the Court may make such order for the payment of costs as it thinks fit.

20. (1) The provisions relating to subdivision of land contained in the Local Government Act, 1919, as amended by subsequent Acts, or any other Act, shall not apply to any subdivision effected pursuant to subsection one of section three of this Act: Provided always that the boundaries of the parcel correspond with boundaries of a lawful subdivision within the meaning of the Local Government Act, 1919, as amended by subsequent Acts, and provided further that any disposition of common property does not contravene the provisions of that Act, as so amended. Approval  
of sub-  
division.

(2) In respect of any application for a certificate under paragraph (b) of subsection three of section four of this Act the local council shall direct the issue of such certificate if it is satisfied that—

- (a) separate occupation of the proposed lots will not contravene the provisions of any prescribed scheme within the meaning of Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts;
- (b) any consent or approval required under any such prescribed scheme or under Division 7 of Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts, has been given in relation to the separate occupation of the proposed lots;
- (c) the building and the proposed subdivision of the parcel into lots for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case, and the public interest.

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(3) Upon any refusal by the local council to direct the issue of the certificate referred to in subsection two of this section, or upon failure by the local council to do so within forty days after application for such certificate, the applicant may appeal to the Land and Valuation Court in accordance with the provisions of section 342N of the Local Government Act, 1919, as amended by subsequent Acts, and the provisions of that section shall extend mutatis mutandis to and in respect of such appeal.

(4) (a) Any proprietor or proprietors may with the approval of the local council subdivide his or their lots by registering a strata plan relating to the lot or lots so resubdivided in the manner provided by this Act for the registration of strata plans.

(b) Save as in this section provided, the provisions of this Act relating to strata plans and to appeals from any decision of the local council or failure by the local council to make a decision shall mutatis mutandis apply to such resubdivision.

(c) Notwithstanding the provisions of section fourteen of this Act proprietors of lots in a strata plan of resubdivision shall not be a body corporate, but shall, upon the date of registration of such plan of resubdivision be members of the body corporate formed on registration of the original strata plan.

(d) On registration of a strata plan of resubdivision, lots comprised therein shall be subject to the burden and have the benefit of any easements affecting such lots in the original strata plan as are included in the plan of resubdivision.

25 ASQI (e) The schedule endorsed on a strata plan of resubdivision, as required by section eighteen of this Act, shall apportion among the lots the unit entitlement of such lot or lots in the original strata plan as are included in the resubdivision.

(f) Before registering a strata plan of resubdivision the Registrar-General shall amend the original registered strata plan in the manner prescribed by regulations under this Act.

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(g) Upon registration of any strata plan of resub-division land therein shall not be dealt with by reference to lots in the original strata plan.

(5) The decision of the Land and Valuation Court upon any appeal under this section shall be final, and shall be binding on the local council and the appellant, and for the purposes of this Act shall be deemed to be the final decision of the local council.

(6) Nothing in this Act shall affect the provisions of section three hundred and nine of the Local Government Act, 1919, as amended by subsequent Acts, or any proclamation thereunder, or take away powers vested in any person or body (including a council) by that section.

21. (1) In this section—

Rates  
and  
taxes.

“Appropriate valuing Act” means—

- (a) where the Valuer-General is the valuing authority in respect of the parcel—the Valuation of Land Act, 1916, as amended by subsequent Acts;
- (b) where a local council is the valuing authority in respect of the parcel—the Local Government Act, 1919, as amended by subsequent Acts;
- (c) where the Metropolitan Water, Sewerage and Drainage Board is the valuing authority in respect of the parcel—the Metropolitan Water, Sewerage, and Drainage Act, 1924, as amended by subsequent Acts;
- (d) where the Hunter District Water Board is the valuing authority in respect of the parcel—the Hunter District Water, Sewerage and Drainage Act, 1938, as amended by subsequent Acts.

“Area”



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*Conveyancing (Strata Titles).*


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“Area” has the meaning ascribed to that expression in the Local Government Act, 1919, as amended by subsequent Acts.

“Valuing authority” means—

- (a) where the parcel is situated in an area or part of an area in respect of which area or part the Valuer-General has furnished a valuation list to the local council concerned in accordance with the Valuation of Land Act, 1916, as amended by subsequent Acts—the Valuer-General;
- (b) where the parcel is situated in an area or part of an area which area or part is not an area or part in respect of which the Valuer-General has furnished a valuation list to the local council concerned in accordance with the Valuation of Land Act, 1916, as amended by subsequent Acts—the local council of the area concerned,

and includes, for the purposes of rates levied in respect of a lot by the Metropolitan Water, Sewerage and Drainage Board under the Metropolitan Water, Sewerage, and Drainage Act, 1924, as amended by subsequent Acts, or the Hunter District Water Board under the Hunter District Water, Sewerage and Drainage Act, 1938, as amended by subsequent Acts, the Metropolitan Water, Sewerage and Drainage Board or the Hunter District Water Board, respectively.

(2) (a) Where a valuing authority causes a parcel to be valued under and subject to the appropriate valuing Act, the parcel shall, notwithstanding the provisions of that or any other Act, be valued as a single parcel of land and as if it were owned by a single owner and for the purposes of any such valuation and all purposes incidental thereto (including objection to a valuation) but not otherwise, the parcel and all improvements thereon shall be deemed to be owned by the body corporate and by no other person.

(b)



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*Conveyancing (Strata Titles).*

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(b) During the period from the registration of the strata plan and until a valuation of the parcel showing the body corporate as owner becomes effective for rating or taxing purposes the valuation then in force shall, for the purposes of subsections four and five of this section, be deemed to be a valuation of the parcel made by the valuing authority showing the body corporate as owner.

(c) The valuing authority is not required to make separate valuations of any part of a parcel otherwise than if the parcel were owned by a single owner.

(3) The body corporate shall, within twenty-eight days after the registration of a strata plan or any amendment thereof, furnish to the valuing authority and to each authority authorised to levy rates or taxes in relation to the parcel or any part thereof two copies of the registered strata plan or any amendment thereof (including all endorsements thereon) certified as prescribed.

For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to the parcel or any part thereof—

- (a) the particulars shown on the certified copy of the strata plan or any amendment thereof so furnished shall be conclusive evidence of those particulars; and
- (b) the production by an authority authorised to levy rates and taxes in relation to the parcel or any part thereof of what purports to be the certified copy of the strata plan or any amendment thereof so furnished shall be prima facie evidence that it is the certified copy so furnished.

(4) Where any authority (hereinafter referred to as a rating authority) authorised to make and levy rates on the parcel uses a valuation of the parcel made by a valuing authority showing the body corporate as owner, the following provisions have effect:—

- (a) the value of the parcel shown in the valuation shall be apportioned by the local council or the rating authority, as the case may be, between the

lots



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*Conveyancing (Strata Titles).*

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- lots comprised in the parcel in proportion to the unit entitlement of the respective lots as shown on the registered strata plan or any amendment thereof;
- (b) subject to section sixteen of this Act the body corporate is not liable in relation to the parcel for any rate made and levied by the local council or the rating authority, as the case may be;
  - (c) the proprietor of each lot comprised in the parcel is deemed to be the owner in fee simple in possession of the lot as if it were a separate parcel of land having a value equal to that apportioned to it under paragraph (a) of this subsection and is, subject to any exemptions or concessions that may be applicable, liable accordingly for any rate made and levied by the local council or the rating authority, as the case may be, on the owners of land :

Provided that where part only of a lot is liable to any rate, such rate shall be made and levied upon an amount which bears the same proportion to the value of the lot as the rental value of the part so liable bears to the rental value of the lot :

Provided further that where part of a parcel is ratable in respect of water, sewerage or drainage services then the ratable value of that part shall be the value of the parcel after deducting therefrom the value of any lot assessed and rated separately and in which the water, sewerage or drainage service, as the case may be, is exclusively for the use and benefit of such lot.

In this subsection, "value of the parcel" means—

- (i) where the body apportioning the value pursuant to paragraph (a) of this subsection makes and levies the rates by reference to the unimproved value of land—the unimproved value of the parcel;
- (ii) where that body makes and levies rates by reference to the improved value of land—the improved value of the parcel; or
- (iii) where that body makes and levies rates by reference to the assessed annual value of land—the assessed annual value of the parcel.



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*Conveyancing (Strata Titles).*

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(5) Where the Commissioner of Land Tax uses a valuation of the parcel showing the body corporate as owner of the parcel the following provisions have effect :—

- (a) In a case where a lot consisting of a garage is used exclusively for the purpose of garaging not more than two motor vehicles and is situated upon the same parcel as and used in conjunction with a lot referred to in subparagraph (i) of this paragraph; or in a case where—
- (i) each of the lots comprised in the parcel forms a complete residence in itself and is occupied for the purposes of residence and for no other purpose. (For the purposes of this subparagraph a lot shall be deemed not to form a complete residence in itself unless it has its own separate cooking and bathing facilities; but shall not be deemed not to form a complete residence in itself by reason only that the common property or a laundry or laundry facilities are used by the occupants of the lot in common with the occupants of one or more of the other lots);
  - (ii) by-laws made under the First Schedule to this Act have during the whole of the twelve months immediately preceding the year for which land tax is being levied contained a provision prohibiting the use of any lot or the common property for any purpose other than residence. (In this subparagraph “year” means the period of twelve months commencing on the first day of November); and
  - (iii) each occupier of a lot who occupied the lot during the period of twelve months referred to in subparagraph (ii) of this paragraph and the council of the body corporate as and when required by the Commissioner of Land Tax, furnishes to him in the form required by him, a statutory declaration declaring that such



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*Conveyancing (Strata Titles).*

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such proprietor, occupier or body corporate has observed during such period of occupation in that twelve months the provision in the by-laws prohibiting the use of any lot or the common property for any purpose other than a residence;

then—

- (iv) the unimproved value of the parcel shown in the valuation shall be apportioned by the Commissioner of Land Tax between the lots comprised in the parcel in proportion to the unit entitlement of the respective lots as shown on the registered strata plan or any amendment thereof;
- (v) the body corporate is not liable in respect of the parcel for land tax;
- (vi) for the purposes of the Land Tax Management Act, 1956, the Land Tax Act, 1956, and any Act amending such Acts, and subject to any concessions or exemptions which may be applicable, each lot shall be deemed to be a separate parcel of land with an unimproved value equal to that apportioned to it under subparagraph (iv) of this paragraph.

(b) In any other case—

- (i) the body corporate is not liable in respect of the parcel for land tax;
- (ii) subject to subparagraphs (iv), (v) and (vi) of this paragraph, the liability for land tax in respect of each proprietor shall be determined by apportioning the land tax applicable to the unimproved value of the parcel between the lots comprised in the parcel in proportion to the unit entitlement of the respective lots as shown on the registered strata plan, or any amendment thereof;

(iii)



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*Conveyancing (Strata Titles).*

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- (iii) where the parcel includes lots which are exempt or partially exempt under section ten of the Land Tax Management Act, 1956, as amended by subsequent Acts, or which are taxable at concessional rates under section four of the Land Tax Act, 1956, then for the purposes of calculating that exemption or concession the unimproved value of a lot shall be determined as in subparagraph (iv) of paragraph (a) of this subsection;
- (iv) where subparagraph (iii) of this paragraph applies, then for the purpose of subparagraph (ii) of this paragraph—

The unimproved value of the parcel shall be reduced by the unimproved value of any exempt lot, and by the unimproved value of the exempt portion of any partially exempt lot.

An exempt lot shall be excluded from the apportionment referred to in subparagraph (ii) of this paragraph.

The unit entitlement of a partially exempt lot shall, for the purposes of this paragraph, be so much of the whole unit entitlement of the lot as bears to the whole unit entitlement of the lot the proportion which the unimproved value of that part of the lot not so exempt bears to the unimproved value of the lot.

The unit entitlement of a lot to which a concessional rate of tax is applicable shall be so much of the whole unit entitlement of that lot as bears to the whole unit entitlement of that lot the proportion which the land tax applicable to the parcel after adjustment for the concessional rate bears to the land tax applicable to the parcel as if no concessional rate was applicable;

(v)



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*Conveyancing (Strata Titles).*

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- (v) subject to subparagraph (vi) of this paragraph, the liability for land tax of a proprietor of a lot comprised in the parcel shall be the amount of land tax apportioned to his lot under this paragraph, and the calculation under this paragraph of that amount shall be deemed to be an assessment within the meaning of the Land Tax Management Act, 1956, as amended by subsequent Acts;
- (vi) each proprietor of a lot comprised in the parcel shall in addition, pursuant to subsection three of section twenty-seven of the Land Tax Management Act, 1956, as amended by subsequent Acts, be assessed and liable for land tax as provided in that subsection, and for the purpose only of that assessment and calculating that liability—
- (a) the proprietors (except those of them whose interests are exempt from taxation under section ten of the Land Tax Management Act, 1956, as amended by subsequent Acts) of the lots so comprised shall be deemed to be joint owners of the parcel as tenants in common in fee simple in possession, and the interest of each proprietor in the unimproved value of the parcel shall be determined as in subparagraph (iv) of paragraph (a) of this subsection;
- (b) the calculation, pursuant to subparagraphs (ii), (iii) and (iv) of this paragraph, of the land tax applicable to the unimproved value of the parcel shall be deemed to be the joint assessment of those joint owners;
- (c) those joint owners in respect of that joint assessment shall be deemed to be the primary taxpayer.



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*Conveyancing (Strata Titles).*

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(6) Where the parcel is situated in an area or part of an area in respect of which area or part the Valuer-General has furnished a valuation list to the local council concerned in accordance with the Valuation of Land Act, 1916, as amended by subsequent Acts, nothing in this section prevents the Valuer-General from making and entering on the valuation roll a valuation of any interest in the parcel and all improvements thereon; but the valuation shall not be included in a valuation list or supplementary list and shall not be used for any purpose of this section.

(7) (a) A reference in the Land Tax Management Act, 1956, as amended by subsequent Acts, to an owner or joint owner shall include a proprietor of a lot.

(b) A reference in section forty-seven of the Land Tax Management Act, 1956, as amended by subsequent Acts, to land tax shall in its application to a lot be deemed to be the amounts as calculated under subparagraphs (ii) and (vi) of paragraph (b) of subsection five of this section.

22. Where any public or local authority or person authorised by it has a statutory right to enter upon any part of the parcel such authority or person shall be entitled to enter upon any other part of the parcel to the extent necessary or expedient to enable it or him to exercise its or his statutory powers. Powers of entry by public or local authority.

23. (1) The body corporate or any person having an interest in a lot may apply to the Court for appointment of an administrator. Administrator.

(2) The Court may in its discretion on cause shown appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit. The remuneration and expenses of the administrator shall be an administrative expense within the meaning of this Act.

(3) The administrator shall, to the exclusion of the body corporate, have the powers and duties of the body corporate or such of those powers and duties as the Court shall order. (4)



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*Conveyancing (Strata Titles).*


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

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

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

Voting  
rights.

**24.** (1) Any powers of voting conferred by or under this Act may be exercised—

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

(b) in the case of a proprietor who is for any reason unable to control his property, by the person who for the time being is authorised by law to control that property.

(2) Where the Court upon the application of the body corporate or of any proprietor is satisfied that there is no person able to vote in respect of a lot, the Court—

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

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

(3) The Court may order service of notice of such application on such person as it thinks fit or may dispense with service of such notice.

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

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



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*Conveyancing (Strata Titles).*

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25. (1) Every application to the Court under this Act shall be by summons at chambers unless otherwise provided by rules of court made under this Act. Procedure upon application to Court.

(2) On any application notice shall be served on such persons as the Court thinks fit, or the Court may dispense with such notice.

(3) The Court may, if it thinks fit, adjourn any application into court and thereupon may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for the final hearing of the application.

(4) The Court may, subject to section twenty-four of this Act, delegate to the Master in Equity all or any of its powers under this Act.

(5) The judges of the Court, or any three of them, may from time to time make general rules under this Act for regulating the practice and procedure of the Court under this Act.

26. (1) Where a proprietor's interest is subject to a registered mortgage, a power of voting conferred on a proprietor by or under this Act— Voting rights of mortgagees.

(a) where a unanimous resolution is required, shall not be exercised by the proprietor, but shall be exercised by the registered mortgagee first entitled in priority;

(b) in other cases, may be exercised by the mortgagee first entitled in priority, and shall not be exercised by the proprietor when such mortgagee is present personally or by proxy.

(2) Subsection one of this section shall not apply unless the mortgagee has given written notice of his mortgage to the body corporate.

27. (1) The body corporate shall at or near the front building alignment of the parcel cause to be continually available a receptacle suitable for purposes of postal delivery, with the name of the body corporate clearly designated thereon. Service of documents on body corporate.

(2)



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*Conveyancing (Strata Titles).*

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(2) A document may be served on the body corporate or the council thereof by post enclosed in a prepaid letter addressed to the body corporate or the council, as the case may be, at the address shown on the strata plan or any amendment thereof, or by placing it in the receptacle referred to in subsection one of this section.

(3) For the purposes of this section, "document" includes summons, notice, order and other legal process.

Offences.

**28.** (1) If default is made in complying with—

- (a) any requirement of subsection one or paragraph (a) of subsection nine of section eleven, subsection five of section thirteen, or section twenty-one, or section twenty-seven of this Act; or
- (b) any duty imposed on the body corporate under section fifteen of this Act to a public or local authority;

the body corporate and each member of the council of the body corporate who is knowingly a party to the default shall be guilty of an offence.

(2) Any person (including the body corporate) who is guilty of an offence against this Act is liable to a penalty not exceeding two hundred pounds.

(3) Proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

Regulations.

**29.** (1) The Governor may make regulations not inconsistent with this Act for and with respect to—

- (a) the manner and form of registering a strata plan;
- (b) the fees to be paid for any procedure or function required or permitted to be done under this Act;
- (c) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)



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*Conveyancing (Strata Titles).*

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(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.



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*Conveyancing (Strata Titles).*


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## FIRST SCHEDULE.

**Duties of a proprietor.**

## 1. A proprietor shall—

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

**Further duties of body corporate.**

## 2. The body corporate shall—

- (a) control, manage and administer the common property for the benefit of all proprietors;
- (b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings (including elevators) used in connection with the common property;
- (c) where practicable establish and maintain suitable lawns and gardens on the common property;
- (d) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one lot or common property;

(e)



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*Conveyancing (Strata Titles).*

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- (e) on the written request of a proprietor, or registered mortgagee of a lot, produce to such proprietor or mortgagee, or person authorised in writing by such proprietor or mortgagee, the policy or policies of insurance effected by the body corporate, and the receipt or receipts for the last premium or premiums in respect thereof.

3. The body corporate may—

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

**Further  
powers of  
body  
corporate.**

4. The powers and duties of the body corporate shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the body corporate.

**Council of  
the body  
corporate.**

5. The council shall consist of not less than three nor more than seven proprietors and shall be elected at each annual general meeting: Provided that where there are not more than three proprietors, the council shall consist of all proprietors.

6. Except where the council consists of all the proprietors, the body corporate may by resolution at an extraordinary general meeting remove any member of the council before the expiration of his term of office and appoint another proprietor in his place to hold office until the next annual general meeting.

7. Any casual vacancy on the council may be filled by the remaining members of the council.

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*Conveyancing (Strata Titles).*

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8. Except where there is only one proprietor, a quorum of the council shall be two, where the council consists of four or less members; three, where it consists of five or six members; and four, where it consists of seven members.

9. At the commencement of each meeting the council shall elect a chairman for the meeting, who shall have a casting as well as an original vote, and if any chairman so elected shall vacate the chair during the course of a meeting the council shall choose in his stead another chairman who shall have the same rights of voting.

10. At meetings of the council all matters shall be determined by simple majority vote.

11. The council may—

- (a) meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit, provided that it shall meet when any member gives to the other members not less than seven days' notice of a meeting proposed by him, specifying the reason for calling such meeting;
- (b) employ for and on behalf of the body corporate such agents and servants as it thinks fit in connection with the control, management and administration of the common property, and the exercise and performance of the powers and duties of the body corporate;
- (c) subject to any restriction imposed or direction given at a general meeting, delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke such delegation.

12. The council shall—

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

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

14. A general meeting of proprietors shall be held within three months after registration of the strata plan.

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*Conveyancing (Strata Titles).*

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

16. All general meetings other than the annual general meeting shall be called extraordinary general meetings.

17. The council may whenever it thinks fit and shall upon a requisition in writing made by proprietors entitled to twenty-five per centum of the total unit entitlement of the lots convene an extraordinary general meeting.

18. Seven days' notice of every general meeting specifying the place, the date and the hour of meeting and in case of special business the general nature of such business shall be given to all proprietors and registered first mortgagees who have notified their interests to the body corporate but accidental omission to give such notice to any proprietor or to any registered first mortgagee or non-receipt of such notice by any proprietor shall not invalidate any proceedings at any such meeting.

19. All business shall be deemed special that is transacted at an annual general meeting with the exception of the consideration of accounts and election of members to the council, or at an extraordinary general meeting. <sup>Proceedings at general meetings.</sup>

20. Save as in these by-laws otherwise provided, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present at the time when the meeting proceeds to business. One-half of the persons entitled to vote present in person or by proxy shall constitute a quorum.

21. If within one-half hour from the time appointed for a general meeting a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within one-half hour from the time appointed for the meeting the persons entitled to vote present shall be a quorum.

22. At the commencement of a general meeting, a chairman of the meeting shall be elected.

23. At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by any proprietor present in person or by proxy. Unless a poll be so demanded a declaration by the chairman that a resolution has on the show of hands been carried shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn.

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

25.



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*Conveyancing (Strata Titles).*

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Votes of  
proprietors.

25. In the case of equality in the votes whether on a show of hands or on a poll the chairman of the meeting shall be entitled to a casting vote in addition to his original vote.

26. On a show of hands each proprietor shall have one vote; on a poll the votes of proprietors shall correspond with the unit entitlement of their respective lots.

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

28. An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting. A proxy need not be a proprietor.

29. Except in cases where by or under this Act a unanimous resolution is required, no proprietor shall be entitled to vote at any general meeting unless all contributions payable in respect of his lot have been duly paid.

30. Co-proprietors may vote by proxy jointly appointed by them, and in the absence of such proxy shall not be entitled to vote on a show of hands, except when the unanimous resolution of proprietors is required by this Act; but any one co-proprietor may demand a poll. On any poll each co-proprietor shall be entitled to such part of the vote applicable to a lot as is proportionate to his interest in the lot. The joint proxy (if any) on a poll shall have a vote proportionate to the interests in the lot of such of the joint proprietors as do not vote personally or by individual proxy.

31. Where proprietors are entitled to successive interests in a lot, the proprietor entitled to the first interest shall alone be entitled to vote, whether on a show of hands or a poll; and this by-law shall be applicable whether by this Act the unanimous resolution of proprietors is required or not.

32. Where a proprietor is a trustee he shall exercise the voting rights in respect of the lot to the exclusion of persons beneficially interested in the trust, and such persons shall not vote.

Common  
seal.

33. The body corporate shall have a common seal which shall at no time be used except by authority of the council previously given and in the presence of the members of the council or at least two members thereof, who shall sign every instrument to which the seal is affixed: Provided that where there is only one member of the body corporate his signature shall be sufficient for the purpose of this clause.

Amendment  
of by-laws.

34. The by-laws in the Second Schedule to this Act may be amended by special resolution of the body corporate, and not otherwise.

Special  
resolution.

35. A special resolution means a resolution passed at a general meeting of which at least fourteen days' notice specifying the proposed special resolution has been given by a majority of not less than three-fourths of the total unit entitlement of the lots, and not less than three-fourths of all members.



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*Conveyancing (Strata Titles).*

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SECOND SCHEDULE.

1. A proprietor shall not—

- (a) use his lot for any purpose which may be illegal or injurious to the reputation of the building ;
- (b) make undue noise in or about any lot or common property ;
- (c) keep any animals on his lot or the common property after notice in that behalf from the council.

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

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By Authority:

V. C. N. BLIGHT, Government Printer, Sydney, 1961







*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

ALLAN PICKERING,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 14 March, 1961.*

## New South Wales



ANNO DECIMO

## ELIZABETHÆ II REGINÆ

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### Act No. 17, 1961.

An Act to facilitate the subdivision of land in strata and the disposition of titles thereto; to amend the Conveyancing Act, 1919, the Local Government Act, 1919, the Land Tax Management Act, 1956, and certain other Acts, in certain respects; and for purposes connected therewith. [Assented to, 27th March, 1961.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Conveyancing (Strata Titles) Act, 1961".

Short title  
and com-  
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2.

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

HOWARD T. FOWLES,  
*Chairman of Committees of the Legislative Assembly.*



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Interpreta-  
tion.

2. In this Act unless the context or subject matter otherwise indicates or requires—

“Body corporate” means body corporate incorporated by section fourteen of this Act.

“Building” means the building or buildings shown in a strata plan.

“Common property” means so much of the land for the time being comprised in a strata plan as is not comprised in any lot shown in such plan.

“Council” means council of a body corporate constituted under the First Schedule to this Act.

“Land” means land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, held by the registered proprietor under perpetual lease from the Crown or in fee simple.

“Local council” means in relation to a parcel the council of the area under the Local Government Act, 1919, as amended by subsequent Acts, in which the parcel is situated.

“Lot” means lot shown as such in a strata plan.

“Mortgage” includes a charge for securing money or money’s worth.

“Parcel” means the land comprised in a strata plan.

“Proprietor” means the proprietor for the time being of a lot.

“Strata plan” means a plan which—

(a) is described in the title or heading thereto as a strata plan;

(b) shows the whole or any part of the land comprised therein as being divided into two or more strata, whether or not any such stratum is divided into two or more lots; and

(c) complies with the requirements of section four of this Act,

and includes a plan of re-subdivision of any lots in a strata plan registered under this Act.

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“The Court” means the Supreme Court in its equitable jurisdiction.

“Unanimous resolution” means a resolution unanimously passed at a duly convened meeting of the body corporate at which all persons entitled to exercise the powers of voting conferred by or under this Act are present personally or by proxy at the time of the motion.

“Unit entitlement” in respect of a lot means the unit entitlement of that lot, specified or apportioned in accordance with the provisions of section eighteen or paragraph (e) of subsection four of section twenty of this Act, as the case may be.

3. (1) Land may be subdivided into lots by registering a **Subdivision** strata plan in the manner provided by or under this Act.

(2) When a plan has been so registered the lots comprised therein, or any one or more thereof, may devolve or be transferred, leased, mortgaged, or otherwise dealt with in the same manner and form as any land held under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

(3) (a) Subject to the provisions of this section, any transfer, lease, mortgage or other dealing affecting a lot shall have the same effect as a similar dealing affecting a lot in a plan of subdivision registered pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts.

(b) A strata plan shall, for the purposes of the Real Property Act, 1900, as amended by subsequent Acts, be deemed upon registration to be embodied in the register book; and notwithstanding the provisions of that Act, as so amended, a proprietor shall hold his lot and his share in the common property subject to any interests affecting the same for the time being notified on the registered strata plan and subject to any amendments to lots or common property shown on that plan.

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(4) Section eighty-eight of the Conveyancing Act, 1919, as amended by subsequent Acts, shall not apply to easements or restrictions as to user implied or created by this Act and such easements and restrictions shall take effect and be enforceable without any memorial or notification on folia of the register book constituting titles to the dominant or servient tenements and without any express indication of those tenements.

**Strata plan.** 4. (1) A strata plan shall—

- (a) delineate the external surface boundaries of the parcel and the location of the building in relation thereto;
- (b) bear a statement containing such particulars as may be necessary to identify the title to such parcel;
- (c) include a drawing illustrating the lots and distinguishing such lots by numbers or other symbols;
- (d) define the boundaries of each lot in the building by reference to floors, walls, and ceilings, provided that it shall not be necessary to show any bearing or dimensions of a lot;
- (e) show the approximate floor area of each lot;
- (f) have endorsed upon it a schedule complying with the provisions of section eighteen of this Act;
- (g) have endorsed upon it the address at which documents may be served on the body corporate in accordance with section twenty-seven of this Act;
- (h) contain such other features as may be prescribed by regulations under this Act.

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

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(3) Every strata plan lodged for registration shall be endorsed with or accompanied by a certificate—

- (a) of a surveyor registered under the Surveyors Act, 1929, as amended by subsequent Acts, that the building shown on the strata plan is within the external surface boundaries of the parcel the subject of the strata plan and where eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel;
- (b) of the town or shire clerk of the local council that the proposed subdivision of the parcel, as illustrated in the strata plan, has been approved by the local council; and
- (c) pursuant to section 317A of the Local Government Act, 1919, as amended by subsequent Acts, in respect of the building.

5. (1) In respect of each lot there shall be implied— **Support.**

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

(2) The provisions of section 181B of the Conveyancing Act, 1919, as amended by subsequent Acts, shall not be capable of applying to walls of a building other than walls erected or to be erected on an external boundary of a parcel.

6. (1) Every proprietor shall be entitled to have his lot **Shelter.** sheltered by all such parts of the building as are capable of affording shelter.

(2) The right created by this section shall be an easement to which such parts aforesaid of the building shall be subject. (3)



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(3) The easement for shelter created by this section shall entitle the proprietor of the dominant tenement to enter on the servient tenement to replace, renew or restore any shelter.

**Services.**

7. In respect of each lot there shall be implied—

- (a) in favour of the proprietor of such lot, and as appurtenant thereto, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of such lot;
- (b) as against the proprietor of such lot, and to which the same shall be subject, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being existing within such lot, as appurtenant to the common property and also to every other lot capable of enjoying such easements.

**Ancillary rights.**

8. All ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect to easements implied or created by this Act.

**Ownership of common property.**

9. (1) The common property shall be held by the proprietors as tenants in common in shares proportional to the unit entitlement of their respective lots.

(2) The Registrar-General in issuing a certificate of title for a lot shall certify therein the proprietor's share in the common property.

(3) Save as in this Act provided, no share in the common property shall be disposed of except as appurtenant to the lot of the proprietor and any assurance of a lot shall operate to assure the share of the disposing party in the common property, without express reference thereto.



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10. (1) The proprietors by unanimous resolution may direct the body corporate to transfer or lease common property, or any part thereof. Dispositions  
of  
common  
property.

(2) The body corporate, if it is satisfied that the resolution was duly passed, and that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have, in the case either of a transfer or a lease, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer or, in the case of a lease, have approved in writing of the execution of the proposed lease, shall execute the appropriate transfer or lease and the transfer or lease shall be valid and effective without execution by any person having an interest in the common property, and the receipt of the body corporate for the purchase money, rent, premiums, or other moneys payable to the body corporate under the terms of the transfer or lease shall be a sufficient discharge, and shall exonerate the persons taking under the transfer or the lessee, as the case may be, from any responsibility for the application of the moneys expressed to have been so received.

(3) Every such transfer or lease lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed, that the transfer or lease conforms with the terms thereof and that all necessary consents were given.

(4) In favour of purchasers of the common property and in favour of the Registrar-General the certificate shall be conclusive evidence of the facts stated therein.

(5) The Registrar-General shall register—

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

(b) the lease by noting it on the registered strata plan in the manner prescribed by regulations under this Act.

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(6) Upon lodgment for registration of a transfer of common property, the Registrar-General shall, before issuing a certificate of title, amend the registered strata plan by deleting therefrom the common property comprised in the transfer.

Disposition  
on destruc-  
tion of  
the building.

**11.** (1) Upon destruction of the building the body corporate shall forthwith lodge with the Registrar-General a notification of such destruction in the form prescribed by regulations under this Act.

(2) Upon receipt of the notification referred to in subsection one of this section the Registrar-General shall make an entry thereof on the relevant registered strata plan in the manner prescribed by regulations under this Act.

(3) Upon such entry as aforesaid proprietors of lots in such strata plan shall be entitled to the parcel as tenants in common in shares proportional to the unit entitlement of their respective lots.

(4) The proprietors of all lots by unanimous resolution may direct the body corporate to transfer the parcel or any part or parts thereof.

(5) The body corporate, if it is satisfied that the resolution was duly passed, and that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate transfer, and the transfer shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the body corporate shall be a sufficient discharge, and shall exonerate the persons taking under the transfer from any responsibility for the application of the moneys expressed to have been so received.

(6) Every such transfer lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that all necessary consents were given.

(7) In favour of purchasers of the parcel and in favour of the Registrar-General the certificate shall be conclusive evidence of the facts stated therein.

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(8) Upon lodgment for registration of a transfer of a parcel by the body corporate pursuant to this section, the Registrar-General, before issuing a certificate of title shall make the entry prescribed by subsection two of this section.

(9) Where land is transferred by the body corporate pursuant to this section—

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

**12.** (1) The proprietors of all lots by unanimous resolution at a meeting convened by the body corporate may direct the body corporate—

Creation of easements and covenants.

- (a) to execute on their behalf a grant of easement or a restrictive covenant burdening the parcel;
- (b) to accept on their behalf a grant of easement or a restrictive covenant benefiting the parcel.

(2) The body corporate, if it is satisfied that the resolution was duly passed, and that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate transfer, or covenant, and the transfer, or covenant shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the body corporate shall be a sufficient discharge, and shall exonerate all persons taking under the transfer from any responsibility for the application of the moneys expressed to have been so received.

(3) Every such transfer, or covenant lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that all necessary consents were given.

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(4) In favour of persons dealing with the body corporate pursuant to this section and in favour of the Registrar-General the certificate shall be conclusive evidence of the facts stated therein.

(5) The Registrar-General shall register the instrument creating such easement, covenant or restriction by noting the same on the registered strata plan in the manner provided by regulations under this Act.

By-laws.

**13.** (1) The building shall be regulated by by-laws.

(2) The by-laws shall provide for the control, management, administration, use and enjoyment of the lots and the common property and shall include—

- (a) the by-laws set forth in the First Schedule to this Act which shall not be added to, amended or repealed except by unanimous resolution;
- (b) the by-laws set forth in the Second Schedule to this Act which may be added to, amended, or repealed by the body corporate.

Until by-laws are made in that behalf the by-laws set forth in the First Schedule and Second Schedule to this Act shall as on and from the registration of a strata plan be in force for all purposes in relation to the parcel and the lots and common property therein.

(3) No by-law or addition to or amendment or repeal of any by-law shall be capable of operating to prohibit or restrict the devolution of lots or any transfer, lease, mortgage or other dealing therewith or to destroy or modify any easement implied or created by this Act.

(4) No addition to or amendment or repeal of any by-law pursuant to paragraph (a) of subsection two of this section shall have effect until the body corporate shall have lodged a notification thereof in the form prescribed by regulation under this Act with the Registrar-General and until the Registrar-General shall have made reference thereto on the registered strata plan.

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(5) The body corporate shall on the application of a proprietor or any person authorised in writing by him make available for inspection the by-laws for the time being in force.

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

**14.** (1) (a) The proprietor or proprietors shall, by Management. virtue of this Act, upon registration of the strata plan be a body corporate under the name "The Proprietors—Strata Plan No. " (the number to be specified shall be the number of the relevant registered strata plan).

(b) In this subsection "proprietors" includes the persons entitled to the parcel pursuant to subsection three of section eleven of this Act.

(2) The provisions of the Companies Act, 1936, as amended by subsequent Acts, shall not apply to the body corporate.

(3) Subject to this Act the body corporate shall be responsible for enforcement of the by-laws and the control, management and administration of the common property.

(4) The body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in accordance with the by-laws for the time being in force.

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(5) The body corporate may—

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

Duties and powers of body corporate.

**15.** (1) The duties of the body corporate shall include the following :—

- (a) to insure and keep insured the building to the replacement value thereof against fire and such other risks as may be prescribed under this Act unless the proprietors by unanimous resolution otherwise resolve;
- (b) to effect such insurance as it is required by law to effect;
- (c) to insure against such other risks as the proprietors may from time to time determine by special resolution as defined in clause thirty-five of the First Schedule to this Act;
- (d) subject to section nineteen of this Act, forthwith to apply insurance moneys received by it in respect of damage to the building in rebuilding and reinstating the building so far as the same may lawfully be effected;
- (e) to pay premiums on any policies of insurance effected by it;
- (f) to keep in a state of good and serviceable repair and properly maintain the common property;
- (g) to comply with notices or orders by any competent public or local authority requiring repairs to, or work to be done in respect of, the parcel or the building,

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- (h) to comply with any reasonable request for the names and addresses of the persons who are members of the council of the body corporate.

The body corporate for the purpose of effecting any insurance under paragraph (a) of this subsection shall be deemed to have an insurable interest to the replacement value of the building and for the purpose of effecting any other insurance under this subsection shall be deemed to have an insurable interest in the subject matter of such insurance.

(2) The powers of the body corporate shall include the following:—

- (a) to establish a fund for administrative expenses sufficient in the opinion of the body corporate for the control, management and administration of the common property, for the payment of any premiums of insurance and the discharge of any other obligation of the body corporate;
- (b) to determine from time to time the amounts to be raised for the purposes aforesaid;
- (c) to raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective lots;
- (d) to recover from any proprietor by an action for debt in any court of competent jurisdiction any sum of money expended by the body corporate for repairs to or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building comprising the lot of that proprietor.

(3) (a) Subject to the provisions of paragraph (b) of this subsection, any contribution levied as aforesaid shall be due and payable on the passing of a resolution to that effect and in accordance with the terms of such resolution, and may be recovered as a debt by the body corporate in an action in any court of competent jurisdiction from the proprietor



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proprietor entitled at the time when such resolution was passed and from the proprietor entitled at the time when such action was instituted both jointly and severally.

(b) The body corporate shall on the application of a proprietor or any person authorised in writing by him certify—

- (i) the amount of any contribution determined as the contribution of the proprietor;
- (ii) the manner in which such contribution is payable;
- (iii) the extent to which such contribution has been paid by the proprietor; and
- (iv) the amount of any rate paid by the body corporate pursuant to section sixteen of this Act, and not recovered by it,

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

(4) The policy of insurance authorised by this section and taken out by the body corporate in respect of the building shall not be liable to be brought into contribution with any other policy of insurance save another policy authorised by this section in respect of the same building.

Recovery  
of rates.

**16.** (1) Where any rate levied in respect of a lot by any local or public authority is due and payable and the proprietor has made default in payment thereof, then such authority may serve upon the body corporate a copy of the notice of assessment of such rate together with a notice requiring the body corporate to pay the same within thirty days from the date of such service.

(2) If the body corporate fails to pay such rate within such period as aforesaid the said authority, without prejudice to its rights against any proprietor, may sue the body corporate for such rate as a debt in any court of competent jurisdiction and may exercise any other remedy available to the authority under any Act, regulation, or by-laws as if the body corporate were the sole proprietor of the parcel and the rate levied was the rate applicable to the parcel.

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(3) Where the body corporate pays any such rate it may recover the amount so paid in an action for debt in any court of competent jurisdiction from the person who is the proprietor of the lot in respect of which the rate was levied at the time when such action is instituted.

17. (1) Where a building is insured to its replacement **Insurance.** value a proprietor may effect a policy of insurance in respect of any damage to his lot in a sum equal to the amount secured, at the date of any loss referred to in such policy, by mortgages charged upon his lot.

Where any such policy of insurance is in force—

- (a) payment shall be made by the insurer under such policy to the mortgagees whose interests are noted thereon in order of their respective priorities, subject to the terms and conditions of the policy;
- (b) subject to the terms and conditions of such policy, the insurer shall be liable to pay thereunder—
  - (i) the value stated in such policy; or
  - (ii) the amount of the loss; or
  - (iii) the amount sufficient, at the date of the loss, to discharge mortgages charged upon the lot, whichever is the least amount;
- (c) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage charged upon the lot the insurer shall be entitled to an assignment of that mortgage;
- (d) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage charged upon the lot the insurer shall be entitled to a sub-mortgage of such mortgage to secure the

**amount**



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amount so paid on terms and conditions agreed upon as provided in subsection three of this section, or, failing agreement, on the same terms and conditions as those contained in the mortgage by the proprietor.

(2) (a) Where a building is uninsured, or has been insured to less than its replacement value, a proprietor may—

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

(b) For the purposes of this subsection, the amount for which a lot is insured under a policy of insurance effected in respect of the building shall be determined by multiplying the value stated in such policy by the unit entitlement of the lot and dividing the product so obtained by the sum of the unit entitlements of all lots.

(3) For the purposes of paragraph (d) of subsection one and of subparagraph (ii) of paragraph (a) of subsection two of this section, any insurer and mortgagee or mortgagees may at any time, whether before or after a policy of insurance has been effected by a proprietor, agree upon the terms and conditions of the sub-mortgage.

(4) Nothing in this section shall limit the right of a proprietor to insure against risks other than damage to his lot.

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(5) The policy of insurance authorised by this section and taken out by a proprietor in respect of damage to his lot shall not be liable to be brought into contribution with any other policy of insurance save another policy authorised by this section and taken out in respect of damage to the same lot.

(6) This section shall apply notwithstanding the provisions of the Life Assurance Act, 1774 (Imperial) (14 Geo. III c. 48), or any other law relating to insurance.

**18.** Every plan lodged for registration as a strata plan shall have endorsed upon it a schedule specifying in whole numbers the unit entitlement of each lot and a number equal to the aggregate unit entitlement of all lots, and such unit entitlement shall determine—

- (a) the voting rights of proprietors;
- (b) the quantum of the undivided share of each proprietor in the common property;
- (c) the proportion payable by each proprietor of contributions levied pursuant to subsection two of section fifteen of this Act.

**19.** (1) For the purposes of this Act the building is destroyed on the happening of the following events—

- (a) when the proprietors by unanimous resolution so resolve; or
- (b) when the Court is satisfied that having regard to the rights and interests of the proprietors as a whole it is just and equitable that the building shall be deemed to have been destroyed and makes a declaration to that effect.

(2) In any case where a declaration has been made pursuant to paragraph (b) of subsection one of this section the Court may by order impose such conditions and give such directions (including directions for the payment of money) as it thinks fit for the purpose of adjusting as between the body corporate and the proprietors and as amongst the proprietors themselves the effect of the declaration.

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(3) (a) Where the building is damaged but is not destroyed pursuant to subsection one of this section, the Court may by order settle a scheme, including provisions—

- (i) for the reinstatement in whole or in part of the building;
- (ii) for transfer or conveyance of the interests of proprietors of lots which have been wholly or partially destroyed to the other proprietors in proportion to their unit entitlement.

(b) In the exercise of its powers under this subsection the Court may make such orders as it deems necessary or expedient for giving effect to the scheme, including orders—

- (i) directing the application of insurance moneys received by the body corporate in respect of damage to the building;
- (ii) directing payment of money by the body corporate or by proprietors or by some one or more of them;
- (iii) directing such amendment of the strata plan as the Court thinks fit, so as to include in the common property any accretion thereto;
- (iv) imposing such terms and conditions as it thinks fit.

(4) For the purposes of this section an application may be made to the Court by the body corporate or by a proprietor or by a registered mortgagee of a lot.

(5) On any application to the Court under this section any insurer who has effected insurance on the building or any part thereof (being insurance against destruction of lots or damage to the building) shall have the right to appear in person or by agent or counsel.

(6) The Court may from time to time vary any order made by it under this section.

(7) (a) The Court on the application of the body corporate or any member thereof or the administrator may by order make provision for the winding up of the affairs of the body corporate.

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(b) By the same or subsequent order the Court may declare the body corporate dissolved as on and from a date specified in the order.

(8) On any application under this section the Court may make such order for the payment of costs as it thinks fit.

20. (1) The provisions relating to subdivision of land contained in the Local Government Act, 1919, as amended by subsequent Acts, or any other Act, shall not apply to any subdivision effected pursuant to subsection one of section three of this Act : Provided always that the boundaries of the parcel correspond with boundaries of a lawful subdivision within the meaning of the Local Government Act, 1919, as amended by subsequent Acts, and provided further that any disposition of common property does not contravene the provisions of that Act, as so amended. Approval of sub-division.

(2) In respect of any application for a certificate under paragraph (b) of subsection three of section four of this Act the local council shall direct the issue of such certificate if it is satisfied that—

- (a) separate occupation of the proposed lots will not contravene the provisions of any prescribed scheme within the meaning of Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts;
- (b) any consent or approval required under any such prescribed scheme or under Division 7 of Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts, has been given in relation to the separate occupation of the proposed lots;
- (c) the building and the proposed subdivision of the parcel into lots for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case, and the public interest.

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(3) Upon any refusal by the local council to direct the issue of the certificate referred to in subsection two of this section, or upon failure by the local council to do so within forty days after application for such certificate, the applicant may appeal to the Land and Valuation Court in accordance with the provisions of section 342N of the Local Government Act, 1919, as amended by subsequent Acts, and the provisions of that section shall extend mutatis mutandis to and in respect of such appeal.

(4) (a) Any proprietor or proprietors may with the approval of the local council subdivide his or their lots by registering a strata plan relating to the lot or lots so resubdivided in the manner provided by this Act for the registration of strata plans.

(b) Save as in this section provided, the provisions of this Act relating to strata plans and to appeals from any decision of the local council or failure by the local council to make a decision shall mutatis mutandis apply to such resubdivision.

(c) Notwithstanding the provisions of section fourteen of this Act proprietors of lots in a strata plan of resubdivision shall not be a body corporate, but shall, upon the date of registration of such plan of resubdivision be members of the body corporate formed on registration of the original strata plan.

(d) On registration of a strata plan of resubdivision, lots comprised therein shall be subject to the burden and have the benefit of any easements affecting such lots in the original strata plan as are included in the plan of resubdivision.

(e) The schedule endorsed on a strata plan of resubdivision, as required by section eighteen of this Act, shall apportion among the lots the unit entitlement of such lot or lots in the original strata plan as are included in the resubdivision.

(f) Before registering a strata plan of resubdivision the Registrar-General shall amend the original registered strata plan in the manner prescribed by regulations under this Act.

(g)



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*Conveyancing (Strata Titles).*

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(g) Upon registration of any strata plan of resub-division land therein shall not be dealt with by reference to lots in the original strata plan.

(5) The decision of the Land and Valuation Court upon any appeal under this section shall be final, and shall be binding on the local council and the appellant, and for the purposes of this Act shall be deemed to be the final decision of the local council.

(6) Nothing in this Act shall affect the provisions of section three hundred and nine of the Local Government Act, 1919, as amended by subsequent Acts, or any proclamation thereunder, or take away powers vested in any person or body (including a council) by that section.

**21.** (1) In this section—

“Appropriate valuing Act” means—

Rates  
and  
taxes.

- (a) where the Valuer-General is the valuing authority in respect of the parcel—the Valuation of Land Act, 1916, as amended by subsequent Acts;
- (b) where a local council is the valuing authority in respect of the parcel—the Local Government Act, 1919, as amended by subsequent Acts;
- (c) where the Metropolitan Water, Sewerage and Drainage Board is the valuing authority in respect of the parcel—the Metropolitan Water, Sewerage, and Drainage Act, 1924, as amended by subsequent Acts;
- (d) where the Hunter District Water Board is the valuing authority in respect of the parcel—the Hunter District Water, Sewerage and Drainage Act, 1938, as amended by subsequent Acts.

“Area”



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*Conveyancing (Strata Titles).*

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“Area” has the meaning ascribed to that expression in the Local Government Act, 1919, as amended by subsequent Acts.

“Valuing authority” means—

- (a) where the parcel is situated in an area or part of an area in respect of which area or part the Valuer-General has furnished a valuation list to the local council concerned in accordance with the Valuation of Land Act, 1916, as amended by subsequent Acts—the Valuer-General;
- (b) where the parcel is situated in an area or part of an area which area or part is not an area or part in respect of which the Valuer-General has furnished a valuation list to the local council concerned in accordance with the Valuation of Land Act, 1916, as amended by subsequent Acts—the local council of the area concerned,

and includes, for the purposes of rates levied in respect of a lot by the Metropolitan Water, Sewerage and Drainage Board under the Metropolitan Water, Sewerage, and Drainage Act, 1924, as amended by subsequent Acts, or the Hunter District Water Board under the Hunter District Water, Sewerage and Drainage Act, 1938, as amended by subsequent Acts, the Metropolitan Water, Sewerage and Drainage Board or the Hunter District Water Board, respectively.

(2) (a) Where a valuing authority causes a parcel to be valued under and subject to the appropriate valuing Act, the parcel shall, notwithstanding the provisions of that or any other Act, be valued as a single parcel of land and as if it were owned by a single owner and for the purposes of any such valuation and all purposes incidental thereto (including objection to a valuation) but not otherwise, the parcel and all improvements thereon shall be deemed to be owned by the body corporate and by no other person.

(b)



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*Conveyancing (Strata Titles).*

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(b) During the period from the registration of the strata plan and until a valuation of the parcel showing the body corporate as owner becomes effective for rating or taxing purposes the valuation then in force shall, for the purposes of subsections four and five of this section, be deemed to be a valuation of the parcel made by the valuing authority showing the body corporate as owner.

(c) The valuing authority is not required to make separate valuations of any part of a parcel otherwise than if the parcel were owned by a single owner.

(3) The body corporate shall, within twenty-eight days after the registration of a strata plan or any amendment thereof, furnish to the valuing authority and to each authority authorised to levy rates or taxes in relation to the parcel or any part thereof two copies of the registered strata plan or any amendment thereof (including all endorsements thereon) certified as prescribed.

For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to the parcel or any part thereof—

- (a) the particulars shown on the certified copy of the strata plan or any amendment thereof so furnished shall be conclusive evidence of those particulars; and
- (b) the production by an authority authorised to levy rates and taxes in relation to the parcel or any part thereof of what purports to be the certified copy of the strata plan or any amendment thereof so furnished shall be prima facie evidence that it is the certified copy so furnished.

(4) Where any authority (hereinafter referred to as a rating authority) authorised to make and levy rates on the parcel uses a valuation of the parcel made by a valuing authority showing the body corporate as owner, the following provisions have effect:—

- (a) the value of the parcel shown in the valuation shall be apportioned by the local council or the rating authority, as the case may be, between the

lots



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*Conveyancing (Strata Titles).*

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- lots comprised in the parcel in proportion to the unit entitlement of the respective lots as shown on the registered strata plan or any amendment thereof;
- (b) subject to section sixteen of this Act the body corporate is not liable in relation to the parcel for any rate made and levied by the local council or the rating authority, as the case may be;
  - (c) the proprietor of each lot comprised in the parcel is deemed to be the owner in fee simple in possession of the lot as if it were a separate parcel of land having a value equal to that apportioned to it under paragraph (a) of this subsection and is, subject to any exemptions or concessions that may be applicable, liable accordingly for any rate made and levied by the local council or the rating authority, as the case may be, on the owners of land :

Provided that where part only of a lot is liable to any rate, such rate shall be made and levied upon an amount which bears the same proportion to the value of the lot as the rental value of the part so liable bears to the rental value of the lot :

Provided further that where part of a parcel is ratable in respect of water, sewerage or drainage services then the ratable value of that part shall be the value of the parcel after deducting therefrom the value of any lot assessed and rated separately and in which the water, sewerage or drainage service, as the case may be, is exclusively for the use and benefit of such lot.

In this subsection, "value of the parcel" means—

- (i) where the body apportioning the value pursuant to paragraph (a) of this subsection makes and levies the rates by reference to the unimproved value of land—the unimproved value of the parcel;
- (ii) where that body makes and levies rates by reference to the improved value of land—the improved value of the parcel; or
- (iii) where that body makes and levies rates by reference to the assessed annual value of land—the assessed annual value of the parcel.

(5)



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*Conveyancing (Strata Titles).*

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(5) Where the Commissioner of Land Tax uses a valuation of the parcel showing the body corporate as owner of the parcel the following provisions have effect :—

- (a) In a case where a lot consisting of a garage is used exclusively for the purpose of garaging not more than two motor vehicles and is situated upon the same parcel as and used in conjunction with a lot referred to in subparagraph (i) of this paragraph; or in a case where—
- (i) each of the lots comprised in the parcel forms a complete residence in itself and is occupied for the purposes of residence and for no other purpose. (For the purposes of this subparagraph a lot shall be deemed not to form a complete residence in itself unless it has its own separate cooking and bathing facilities; but shall not be deemed not to form a complete residence in itself by reason only that the common property or a laundry or laundry facilities are used by the occupants of the lot in common with the occupants of one or more of the other lots);
  - (ii) by-laws made under the First Schedule to this Act have during the whole of the twelve months immediately preceding the year for which land tax is being levied contained a provision prohibiting the use of any lot or the common property for any purpose other than residence. (In this subparagraph “year” means the period of twelve months commencing on the first day of November); and
  - (iii) each occupier of a lot who occupied the lot during the period of twelve months referred to in subparagraph (ii) of this paragraph and the council of the body corporate as and when required by the Commissioner of Land Tax, furnishes to him in the form required by him, a statutory declaration declaring that such



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*Conveyancing (Strata Titles).*

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such proprietor, occupier or body corporate has observed during such period of occupation in that twelve months the provision in the by-laws prohibiting the use of any lot or the common property for any purpose other than a residence;

then—

- (iv) the unimproved value of the parcel shown in the valuation shall be apportioned by the Commissioner of Land Tax between the lots comprised in the parcel in proportion to the unit entitlement of the respective lots as shown on the registered strata plan or any amendment thereof;
- (v) the body corporate is not liable in respect of the parcel for land tax;
- (vi) for the purposes of the Land Tax Management Act, 1956, the Land Tax Act, 1956, and any Act amending such Acts, and subject to any concessions or exemptions which may be applicable, each lot shall be deemed to be a separate parcel of land with an unimproved value equal to that apportioned to it under subparagraph (iv) of this paragraph.

(b) In any other case—

- (i) the body corporate is not liable in respect of the parcel for land tax;
- (ii) subject to subparagraphs (iv), (v) and (vi) of this paragraph, the liability for land tax in respect of each proprietor shall be determined by apportioning the land tax applicable to the unimproved value of the parcel between the lots comprised in the parcel in proportion to the unit entitlement of the respective lots as shown on the registered strata plan, or any amendment thereof;

(iii)



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*Conveyancing (Strata Titles).*

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- (iii) where the parcel includes lots which are exempt or partially exempt under section ten of the Land Tax Management Act, 1956, as amended by subsequent Acts, or which are taxable at concessional rates under section four of the Land Tax Act, 1956, then for the purposes of calculating that exemption or concession the unimproved value of a lot shall be determined as in subparagraph (iv) of paragraph (a) of this subsection;
- (iv) where subparagraph (iii) of this paragraph applies, then for the purpose of subparagraph (ii) of this paragraph—

The unimproved value of the parcel shall be reduced by the unimproved value of any exempt lot, and by the unimproved value of the exempt portion of any partially exempt lot.

An exempt lot shall be excluded from the apportionment referred to in subparagraph (ii) of this paragraph.

The unit entitlement of a partially exempt lot shall, for the purposes of this paragraph, be so much of the whole unit entitlement of the lot as bears to the whole unit entitlement of the lot the proportion which the unimproved value of that part of the lot not so exempt bears to the unimproved value of the lot.

The unit entitlement of a lot to which a concessional rate of tax is applicable shall be so much of the whole unit entitlement of that lot as bears to the whole unit entitlement of that lot the proportion which the land tax applicable to the parcel after adjustment for the concessional rate bears to the land tax applicable to the parcel as if no concessional rate was applicable;

(v)



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*Conveyancing (Strata Titles).*

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- (v) subject to subparagraph (vi) of this paragraph, the liability for land tax of a proprietor of a lot comprised in the parcel shall be the amount of land tax apportioned to his lot under this paragraph, and the calculation under this paragraph of that amount shall be deemed to be an assessment within the meaning of the Land Tax Management Act, 1956, as amended by subsequent Acts;
- (vi) each proprietor of a lot comprised in the parcel shall in addition, pursuant to subsection three of section twenty-seven of the Land Tax Management Act, 1956, as amended by subsequent Acts, be assessed and liable for land tax as provided in that subsection, and for the purpose only of that assessment and calculating that liability—
- (a) the proprietors (except those of them whose interests are exempt from taxation under section ten of the Land Tax Management Act, 1956, as amended by subsequent Acts) of the lots so comprised shall be deemed to be joint owners of the parcel as tenants in common in fee simple in possession, and the interest of each proprietor in the unimproved value of the parcel shall be determined as in subparagraph (iv) of paragraph (a) of this subsection;
  - (b) the calculation, pursuant to subparagraphs (ii), (iii) and (iv) of this paragraph, of the land tax applicable to the unimproved value of the parcel shall be deemed to be the joint assessment of those joint owners;
  - (c) those joint owners in respect of that joint assessment shall be deemed to be the primary taxpayer.

(6)



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*Conveyancing (Strata Titles).*


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(6) Where the parcel is situated in an area or part of an area in respect of which area or part the Valuer-General has furnished a valuation list to the local council concerned in accordance with the Valuation of Land Act, 1916, as amended by subsequent Acts, nothing in this section prevents the Valuer-General from making and entering on the valuation roll a valuation of any interest in the parcel and all improvements thereon; but the valuation shall not be included in a valuation list or supplementary list and shall not be used for any purpose of this section.

(7) (a) A reference in the Land Tax Management Act, 1956, as amended by subsequent Acts, to an owner or joint owner shall include a proprietor of a lot.

(b) A reference in section forty-seven of the Land Tax Management Act, 1956, as amended by subsequent Acts, to land tax shall in its application to a lot be deemed to be the amounts as calculated under subparagraphs (ii) and (vi) of paragraph (b) of subsection five of this section.

**22.** Where any public or local authority or person authorised by it has a statutory right to enter upon any part of the parcel such authority or person shall be entitled to enter upon any other part of the parcel to the extent necessary or expedient to enable it or him to exercise its or his statutory powers. Powers of entry by public or local authority.

**23.** (1) The body corporate or any person having an interest in a lot may apply to the Court for appointment of an administrator. Administrator.

(2) The Court may in its discretion on cause shown appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit. The remuneration and expenses of the administrator shall be an administrative expense within the meaning of this Act.

(3) The administrator shall, to the exclusion of the body corporate, have the powers and duties of the body corporate or such of those powers and duties as the Court shall order.

(4)



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*Conveyancing (Strata Titles).*

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

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

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

**Voting rights.**

**24.** (1) Any powers of voting conferred by or under this Act may be exercised—

- (a) in the case of a proprietor who is an infant, by his guardian;
- (b) in the case of a proprietor who is for any reason unable to control his property, by the person who for the time being is authorised by law to control that property.

(2) Where the Court upon the application of the body corporate or of any proprietor is satisfied that there is no person able to vote in respect of a lot, the Court—

- (a) shall, in cases where a unanimous resolution is required by this Act, and
- (b) may in its discretion in any other case,

appoint the Public Trustee or some other fit and proper person for the purpose of exercising such powers of voting under this Act as the Court shall determine.

(3) The Court may order service of notice of such application on such person as it thinks fit or may dispense with service of such notice.

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

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



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*Conveyancing (Strata Titles).*


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**25.** (1) Every application to the Court under this Act shall be by summons at chambers unless otherwise provided by rules of court made under this Act. Procedure upon application to Court.

(2) On any application notice shall be served on such persons as the Court thinks fit, or the Court may dispense with such notice.

(3) The Court may, if it thinks fit, adjourn any application into court and thereupon may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for the final hearing of the application.

(4) The Court may, subject to section twenty-four of this Act, delegate to the Master in Equity all or any of its powers under this Act.

(5) The judges of the Court, or any three of them, may from time to time make general rules under this Act for regulating the practice and procedure of the Court under this Act.

**26.** (1) Where a proprietor's interest is subject to a registered mortgage, a power of voting conferred on a proprietor by or under this Act— Voting rights of mortgagees.

- (a) where a unanimous resolution is required, shall not be exercised by the proprietor, but shall be exercised by the registered mortgagee first entitled in priority;
- (b) in other cases, may be exercised by the mortgagee first entitled in priority, and shall not be exercised by the proprietor when such mortgagee is present personally or by proxy.

(2) Subsection one of this section shall not apply unless the mortgagee has given written notice of his mortgage to the body corporate.

**27.** (1) The body corporate shall at or near the front building alignment of the parcel cause to be continually available a receptacle suitable for purposes of postal delivery, with the name of the body corporate clearly designated thereon. Service of documents on body corporate.

(2)



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*Conveyancing (Strata Titles).*

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(2) A document may be served on the body corporate or the council thereof by post enclosed in a prepaid letter addressed to the body corporate or the council, as the case may be, at the address shown on the strata plan or any amendment thereof, or by placing it in the receptacle referred to in subsection one of this section.

(3) For the purposes of this section, "document" includes summons, notice, order and other legal process.

**Offences.**

**28.** (1) If default is made in complying with—

- (a) any requirement of subsection one or paragraph (a) of subsection nine of section eleven, subsection five of section thirteen, or section twenty-one, or section twenty-seven of this Act; or
- (b) any duty imposed on the body corporate under section fifteen of this Act to a public or local authority;

the body corporate and each member of the council of the body corporate who is knowingly a party to the default shall be guilty of an offence.

(2) Any person (including the body corporate) who is guilty of an offence against this Act is liable to a penalty not exceeding two hundred pounds.

(3) Proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

**Regulations.**

**29.** (1) The Governor may make regulations not inconsistent with this Act for and with respect to—

- (a) the manner and form of registering a strata plan;
- (b) the fees to be paid for any procedure or function required or permitted to be done under this Act;
- (c) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)



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*Conveyancing (Strata Titles).*

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(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.



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*Conveyancing (Strata Titles).*


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## FIRST SCHEDULE.

**Duties of a proprietor.**

## 1. A proprietor shall—

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

**Further duties of body corporate.**

## 2. The body corporate shall—

- (a) control, manage and administer the common property for the benefit of all proprietors;
- (b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings (including elevators) used in connection with the common property;
- (c) where practicable establish and maintain suitable lawns and gardens on the common property;
- (d) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one lot or common property;

(e)



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*Conveyancing (Strata Titles).*


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- (e) on the written request of a proprietor, or registered mortgagee of a lot, produce to such proprietor or mortgagee, or person authorised in writing by such proprietor or mortgagee, the policy or policies of insurance effected by the body corporate, and the receipt or receipts for the last premium or premiums in respect thereof.
3. The body corporate may—
- (a) purchase, hire or otherwise acquire personal property for use by proprietors in connection with their enjoyment of common property;
- (b) borrow moneys required by it in the performance of its duties or the exercise of its powers;
- (c) secure the repayment of moneys borrowed by it, and the payment of interest thereon, by negotiable instrument, or mortgage of unpaid contributions (whether levied or not), or mortgage of any property vested in it, or by combination of those means;
- (d) invest as it may determine any moneys in the fund for administrative expenses;
- (e) make an agreement with any proprietor or occupier of a lot for the provision of amenities or services by it to such lot or to the proprietor or occupier thereof;
- (f) grant to a proprietor the right to exclusive use and enjoyment of common property, or special privileges in respect thereof, provided that any such grant shall be determinable on reasonable notice unless the body corporate by unanimous resolution otherwise resolves;
- (g) do all things reasonably necessary for the enforcement of the by-laws and the control, management and administration of the common property.
4. The powers and duties of the body corporate shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the body corporate. **Council of the body corporate.**
5. The council shall consist of not less than three nor more than seven proprietors and shall be elected at each annual general meeting: Provided that where there are not more than three proprietors, the council shall consist of all proprietors.
6. Except where the council consists of all the proprietors, the body corporate may by resolution at an extraordinary general meeting remove any member of the council before the expiration of his term of office and appoint another proprietor in his place to hold office until the next annual general meeting.
7. Any casual vacancy on the council may be filled by the remaining members of the council.
- 8.



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*Conveyancing (Strata Titles).*

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8. Except where there is only one proprietor, a quorum of the council shall be two, where the council consists of four or less members; three, where it consists of five or six members; and four, where it consists of seven members.

9. At the commencement of each meeting the council shall elect a chairman for the meeting, who shall have a casting as well as an original vote, and if any chairman so elected shall vacate the chair during the course of a meeting the council shall choose in his stead another chairman who shall have the same rights of voting.

10. At meetings of the council all matters shall be determined by simple majority vote.

11. The council may—

- (a) meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit, provided that it shall meet when any member gives to the other members not less than seven days' notice of a meeting proposed by him, specifying the reason for calling such meeting;
- (b) employ for and on behalf of the body corporate such agents and servants as it thinks fit in connection with the control, management and administration of the common property, and the exercise and performance of the powers and duties of the body corporate;
- (c) subject to any restriction imposed or direction given at a general meeting, delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke such delegation.

12. The council shall—

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

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

**General  
meetings.**

14. A general meeting of proprietors shall be held within three months after registration of the strata plan. 15.



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*Conveyancing (Strata Titles).*

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

16. All general meetings other than the annual general meeting shall be called extraordinary general meetings.

17. The council may whenever it thinks fit and shall upon a requisition in writing made by proprietors entitled to twenty-five per centum of the total unit entitlement of the lots convene an extraordinary general meeting.

18. Seven days' notice of every general meeting specifying the place, the date and the hour of meeting and in case of special business the general nature of such business shall be given to all proprietors and registered first mortgagees who have notified their interests to the body corporate but accidental omission to give such notice to any proprietor or to any registered first mortgagee or non-receipt of such notice by any proprietor shall not invalidate any proceedings at any such meeting.

19. All business shall be deemed special that is transacted at an annual general meeting with the exception of the consideration of accounts and election of members to the council, or at an extraordinary general meeting. <sup>Proceedings at general meetings.</sup>

20. Save as in these by-laws otherwise provided, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present at the time when the meeting proceeds to business. One-half of the persons entitled to vote present in person or by proxy shall constitute a quorum.

21. If within one-half hour from the time appointed for a general meeting a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within one-half hour from the time appointed for the meeting the persons entitled to vote present shall be a quorum.

22. At the commencement of a general meeting, a chairman of the meeting shall be elected.

23. At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by any proprietor present in person or by proxy. Unless a poll be so demanded a declaration by the chairman that a resolution has on the show of hands been carried shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn.

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

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*Conveyancing (Strata Titles).*


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25. In the case of equality in the votes whether on a show of hands or on a poll the chairman of the meeting shall be entitled to a casting vote in addition to his original vote.
- Votes of proprietors. 26. On a show of hands each proprietor shall have one vote; on a poll the votes of proprietors shall correspond with the unit entitlement of their respective lots.
27. On a show of hands or on a poll votes may be given either personally or by proxy.
28. An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting. A proxy need not be a proprietor.
29. Except in cases where by or under this Act a unanimous resolution is required, no proprietor shall be entitled to vote at any general meeting unless all contributions payable in respect of his lot have been duly paid.
30. Co-proprietors may vote by proxy jointly appointed by them, and in the absence of such proxy shall not be entitled to vote on a show of hands, except when the unanimous resolution of proprietors is required by this Act; but any one co-proprietor may demand a poll. On any poll each co-proprietor shall be entitled to such part of the vote applicable to a lot as is proportionate to his interest in the lot. The joint proxy (if any) on a poll shall have a vote proportionate to the interests in the lot of such of the joint proprietors as do not vote personally or by individual proxy.
31. Where proprietors are entitled to successive interests in a lot, the proprietor entitled to the first interest shall alone be entitled to vote, whether on a show of hands or a poll; and this by-law shall be applicable whether by this Act the unanimous resolution of proprietors is required or not.
32. Where a proprietor is a trustee he shall exercise the voting rights in respect of the lot to the exclusion of persons beneficially interested in the trust, and such persons shall not vote.
- Common seal. 33. The body corporate shall have a common seal which shall at no time be used except by authority of the council previously given and in the presence of the members of the council or at least two members thereof, who shall sign every instrument to which the seal is affixed: Provided that where there is only one member of the body corporate his signature shall be sufficient for the purpose of this clause.
- Amendment of by-laws. 34. The by-laws in the Second Schedule to this Act may be amended by special resolution of the body corporate, and not otherwise.
- Special resolution. 35. A special resolution means a resolution passed at a general meeting of which at least fourteen days' notice specifying the proposed special resolution has been given by a majority of not less than three-fourths of the total unit entitlement of the lots, and not less than three-fourths of all members.



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*Conveyancing (Strata Titles).*

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SECOND SCHEDULE.

1. A proprietor shall not—

- (a) use his lot for any purpose which may be illegal or injurious to the reputation of the building ;
- (b) make undue noise in or about any lot or common property ;
- (c) keep any animals on his lot or the common property after notice in that behalf from the council.

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

*In the name and on behalf of Her Majesty I assent to  
this Act.*

E. W. WOODWARD,  
*Governor.*

*Government House,  
Sydney, 27th March, 1961.*



Consent of the Board

SECOND SCHEDULE

1. The proposed plan is—  
(a) to be for the purpose of...  
(b) to be for the purpose of...  
(c) to be for the purpose of...  
(d) to be for the purpose of...  
(e) to be for the purpose of...  
(f) to be for the purpose of...  
(g) to be for the purpose of...  
(h) to be for the purpose of...  
(i) to be for the purpose of...  
(j) to be for the purpose of...  
(k) to be for the purpose of...  
(l) to be for the purpose of...  
(m) to be for the purpose of...  
(n) to be for the purpose of...  
(o) to be for the purpose of...  
(p) to be for the purpose of...  
(q) to be for the purpose of...  
(r) to be for the purpose of...  
(s) to be for the purpose of...  
(t) to be for the purpose of...  
(u) to be for the purpose of...  
(v) to be for the purpose of...  
(w) to be for the purpose of...  
(x) to be for the purpose of...  
(y) to be for the purpose of...  
(z) to be for the purpose of...

In witness whereof, I, the Secretary, have hereunto set my hand and the seal of the Board at...  
this ... day of ... 1944.  
Secretary