

CHAPTER 416
THE UNIT TITLES ACT
[PRINCIPAL LEGISLATIONS]
ARRANGEMENT OF SECTIONS

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CHAPTER 416

THE UNIT TITLES ACT

An Act to provide for the management of the division of buildings into units, clusters, blocks and sections owned individually or co-owned and use of designated areas; to provide for issuance of certificate of unit titles for the individual ownership of the units, clusters or sections of the building, management and resolution of disputes arising from the use of common property; to provide for use of common property by occupiers other than owners and to provide for related matters.

[1st May, 2009]

[GN. No. 107 of 2009]

Acts Nos.
16 of 2008
2 of 2010

PART I

PRELIMINARY PROVISIONS

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|----------------|--|
| Short title | 1. This Act may be cited as the Unit Titles Act. |
| Application | 2. This Act shall apply to Mainland Tanzania. |
| Interpretation | 3. In this Act, unless the context otherwise requires-
“administrator” means an Administrator referred to under section 71;
“association” means an association established under section 35;
“cluster” means group of houses for residential or business purposes closed together;
“Committee” means a Management Committee of the association established under section 47;
“common area for restricted use” means a common area used by one or several co-owners;
“common property” means whole or a portion of property that is owned by all owners for their common use before |

or after a units plan is registered, and common area shall have the same meaning;

“co-owners” means owners of units of real property in which certain parts of the property are owned in common;

“developer” means a person who on the date the application is made to the Registrar for registration of units plan is registered in the Register as owner of the units as shown on the plan;

“fractional share” means a division of common areas into fractions belonging to one or several co-owners, who owns undivided right of ownership in the area equal to the relative size of one’s fractional share;

“managing agent” means an agent referred to under section 49;

“Minister” means the Minister responsible for housing matters;

“owner” means an owner of a unit registered under units plan in accordance with this Act;

“phased unit plan” means a unit plan registered in successive phases under section 5;

“property” means a unit property as provided for under this Act;

“Register” means a register referred under section 8, 9 and 51;

“Registrar” means a Registrar of titles as defined under the Land Registration Act;

“special resolution” means a resolution of an association passed by a majority of the members of the association;

“unit factor” means a proportional share of a common area as determined by the ownership of individual units in the unit property;

“unit plan” means a plan referred to under section 4(2);

“unit title” shall have a meaning ascribed to it under section 5(1);

“unit” means a portion of property which is owned by a specific owner or co-owned for exclusive use by owners.

PART II

CREATION AND REGISTRATION OF UNITS

Creation of units **4.**—(1) Unit property shall be created when certain units of real property are owned by co-owners for their exclusive use and certain portions of the same property are held in co-ownership for common use.

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

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

(4) The developer in depositing a unit plan with the Registrar under subsection (2) may indicate whether unit plan shall be developed at once or in successive phases.

(5) Where the developer deposits a phased unit plan in accordance with subsections (2) and (4), he shall indicate a time-table for the development of the various phases.

Description of unit property **5.**—(1) For the purpose of this Act, a unit property shall include a single building or several buildings comprising of sections of unified site together with the land on which they are located and real rights existing in their favour.

(2) The unit property may be in the form of high rise structures or in rows or terraces, or in buildings in a cluster form.

Fractional shares **6.**—(1) Ownership of the common areas of the property shall be divided into fractions belonging to one or several co-owners, and every co-owner shall hold an undivided right of ownership in the common areas equal to the relative size of his fractional share.

(2) The relative size of each of the fractional shares with reference to the aggregate of the fractional shares shall

be determined as the quotient of the physical area of the co-owner's unit divided by the aggregate physical area of units of the property and the sum of fractional share shall equal one after rounding for minor discrepancies.

(3) The common areas of the property shall include-

- (a) the land, yards, verandas or balconies, parks and gardens, access ways, stairways and elevators, passageways and halls, common service areas, parking and storage areas, basements, foundations and main walls of properties;
- (b) common equipment and apparatus, such as the central heating and air-conditioning systems and the piping and wiring; and
- (c) partitions or walls that are not section of the foundations and main walls of a building but which separate a unit from a common area or from another unit.

(4) Each unit of the property shall constitute a distinct object of real property and may be alienated by the owner in whole or in part, and these shall include, in each case, the fractional share appurtenant to the unit, as well as the right to use the appurtenant restricted common areas, where applicable.

(5) The fractional share appurtenant to a unit may not be-

- (a) alienated separately from the unit or be the object of an action in partition; and
- (b) distinct objects real property for the purposes of real property assessment and taxation.

(6) Alienation of a divided section of a unit shall have no legal effect unless the by-law of co-ownership and the plan of the property have been altered prior to the alienation so as to create a new fractional share, describe it, give it a separate property number and record the alterations made to the boundaries between contiguous units.

(7) The by-laws regarding the common areas shall also apply to common areas for restricted use.

Procurement of
planning consent

7. A developer or proprietor for a unit development shall procure planning and building permit consent from appropriate local government authority as provided for under Part IV of the Urban Planning Act.

Cap. 355

Registration of
units

8.-(1) The Registrar shall, upon an application for registration of a unit plan where appropriate-

- (a) close the part of the Register relating to the common property described in the plan; and
- (b) open a separate part for each unit described in the plan, and shall upon the payment of the prescribed fee, issue a certificate of title in respect of the unit.

Entering of
separate interest
of units in
Register

9.-(1) The provisions of the Land Registration Act relating to registration techniques, procedures and practices shall, unless otherwise provided in this Act, apply to the registration of land dealing with units under this Act.

Cap. 334

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

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

Cap. 334

(4) Each common property included in a unit plan pursuant to which titles have been issued shall be held by the unit owners as tenants in common, in shares proportional to the fractional shares of their respective units.

(5) A share in the common property mentioned in subsection (1) shall be shown on any title issued, in accordance with the Land Registration Act.

Cap. 334

(6) Except as provided for in this Act, a share in the common property shall not be disposed of or become subject to any charge unless it belongs to the unit of an owner.

(7) Subject to subsection (6), any disposition of, or charge on a unit shall operate to dispose of, or charge the share in the common property without express reference to it.

Common
property

10.—(1) Any interests affecting the common properties which were entered on the part of the Register closed under section 8 shall be endorsed on the parts opened under the section and on the certificates of title issued under that section to the extent of the unit factor.

(2) Any interest affecting a unit comprised in a unit plan registered under section 8 but not endorsed on a separate part of the Register shall be endorsed on a separate part of the Register of the unit opened under section 8 and on the certificate of title issued in respect of that unit.

Recording
of units and
issuance of
certificate of title

11.—(1) The Registrar shall, upon opening a separate part of the Register for a unit under section 8, record in that part the unit factor, and shall record the unit factor on the certificate of title issued in respect of the unit.

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

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

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

Subdivision of
units

12.—(1) A proprietor of a unit may, in accordance with this Act, and with the approval of a local authority, where the proposed changes may have major impact to the co-owners or neighbourhood, subdivide or consolidate his unit by registering with the Registrar a unit plan relating to the unit intended to be subdivided or consolidated.

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

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

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

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

Change of use of
units

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

- (a) the association has, by special approval, consented to the change of use; and
- (b) where it affects the proposed scheme, the planning and local authorities have approved the change of use.

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

(3) The Registrar shall, on receipt of a modified unit plan under subsection (2), append the unit plan as an annexure to the unit plan of the unit property registered under section 8.

Unit plan
to conform
to certain
requirements

14.—(1) The Registrar shall not register a unit plan as a unit plan unless—

- (a) the plan, in its heading, is described as a unit plan;
- (b) there is indicated in the plan, a delineation of the external surface boundaries of the common property and the location of the building in relation to them;

- (c) the plan includes a drawing illustrating the units and distinguishing the units by numbers or other symbols;
- (d) the boundaries of each unit are clearly defined in the plan;
- (e) the approximate floor area of each unit is clearly shown in the plan;
- (f) the plan is accompanied by a schedule specifying in whole numbers, the unit factor for each unit in the common property;
- (g) the plan is accompanied by a statement containing such particulars as are necessary to identify the title to the common property;
- (h) the plan is accompanied by the certificates referred to under section 15;
- (i) the plan is signed by the proprietor or developer;
- (j) the plan contains the address at which documents are to be served on the relevant association in accordance with this Act; and
- (k) the plan contains any other particulars prescribed by or under regulations.

(2) In the case of a unit plan that includes residential units, there shall be indicated in that plan, in addition to conforming to the requirements specified in subsection (1) and to the satisfaction of the Registrar, a delineation of the boundaries of the areas that are to be leased under subsection (3) of section 9.

Unit plan to be accompanied by certificates

15.-(1) A unit plan referred to in section 14 shall be accompanied by-

- (a) certificate of a registered Land Surveyor to the effect that the structure shown on the plan is within the external surface boundaries of the common property which is the subject of the plan, and if there are projections beyond the external boundaries, that an appropriate easement has been granted as an appurtenance of the common property; and

- (b) a certificate of a local authority to the effect that the proposed division of the structure as shown on the plan has been approved by the local authority in accordance with any enactment regulating land use and building construction.

(2) In the case of a unit plan in respect of a building or structure that is to be brought under the operation of the Act, the plan shall, before it is registered, be accompanied by a certificate of an architect registered under the relevant law, to the effect that the units indicated in the plan correlate with the existing structure.

(3) Where an application is made for a certificate under subsection (1) (b), the local authority-

- (a) may, in respect of a building or structure constructed before the commencement of this Act, or for which a building permit was issued prior to the commencement of this Act, refuse to issue a certificate if the building or structure does not conform with this Act; and
- (b) shall, in respect of a building or structure for which a building permit was issued on or after the commencement of this Act, issue the certificate if it is satisfied that the building or structure conforms with any relevant law.

Boundaries of
units

16.-(1) Unless otherwise provided in the unit plan-

- (a) a boundary of a unit is described by reference to a floor, wall or ceiling; or
- (b) where a wall located within a unit is a load bearing wall, the only portion of that floor, wall or ceiling, as the case may be, that forms part of the unit, including any lath and plaster, paneling, gypsum concrete panels, flooring material or coverings or any other material that is attached, laid, glued or applied to the floor, wall or ceiling, as the case may be.

(2) Notwithstanding subsection (1), all doors and windows of a unit shall be part of the unit unless otherwise provided in the unit plan.

Conversion of
premises to units

17. Where a building contains premises that are-

(a) rented to a tenant who is not a party to a sale agreement;
and

(b) not included in a unit plan,

the owner of the premises or a person acting on his behalf shall not sell the premises until the unit plan which includes the premises registered in accordance with this Act.

Copies of unit
plan for assessing
taxes, rate, etc.

18.-(1) An association shall, within twenty eight days after the registration of a unit plan or amendment to the plan, furnish a rating authority with two copies of the unit plan certified by the Registrar;

(2) For purposes of assessing, levying or recovery of rate, charges or taxation in relation to the property or a part of it, the particulars shown on the certified copies of the unit plan furnished under subsection (1), shall be conclusive proof of the particulars.

PART III

PROPRIETARY RIGHTS AND OBLIGATIONS OF CO-OWNERS

By-laws

19.-(1) The by-laws of the association of co-owners, made under section 50, shall contain by laws on the enjoyment, use and upkeep of the private and common areas, including the operation and administration of the co-ownership and dispute settlement.

(2) The by-laws under subsection (1) shall also deal with the procedure of assessment and collection of contributions to common expenses.

Rights and
obligations of
co-owners

20.-(1) Subject to the provisions of this Act and the by-laws made under this Part, each co-owner shall have a right-

(a) to use his unit and the common areas for his own needs as well as for the needs of his family and household;

(b) without the approval of the association or any other co-owner, to transfer his unit to any other person by sale,

lease, gift, bequest, devise, pledge or mortgage or any other manner permitted by law;

- (c) to participate in the management of the association in accordance with the provisions of the by-laws;
- (d) to elect and be elected to the Association's Governing Committees; and
- (e) to have and exercise other rights that do not contradict the provision of this Act and any other written law.

(2) Each co-owner shall be obliged to-

- (a) observe the by-laws; and
- (b) contribute to costs of maintaining and operating the property, including the contingency fund, in proportion to his fractional share.

(3) The co-owners who use common areas for restricted use shall contribute to the costs resulting from those portions.

(4) A co-owner shall not, in his unit, interfere with the carrying out of work required for the conservation of the property approved by the association or of urgent work.

(5) A co-owner who suffers prejudice by the carrying out of work, through a permanent diminution in the value of his unit, a grave disturbance or deterioration of enjoyment, even if temporary, shall be entitled to compensation from-

- (a) the association, if the association ordered the work; or
- (b) the co-owners who did the work.

Incidental rights
of owners of
common property

21.-(1) The owner of a common property and each unit comprised in a registered unit plan shall have as appurtenant to it, such rights of-

- (a) support, shelter and protection;
- (b) passage or provision of water, sewage, drainage, gas, electricity, telecommunication, garbage and air; and
- (c) any other service of whatever nature, over the common property and every structure on it as may be necessary for the reasonable use or enjoyment of the common property or unit.

(2) The owner of a common property and each unit comprised in a unit plan shall have as appurtenant to it-

- (a) a right to full, free and uninterrupted access; and
- (b) use of light through or from any windows, doors or other apertures existing at the date of registration of the unit.

(3) The rights created by this section shall carry with them ancillary rights necessary to make them effective as if they were easements.

(4) This section shall not affect any common property other than the common property to which the unit plan relates.

Easements in
favour of unit
owner

22.-(1) After the registration of a unit plan, there shall be implied in favour of each unit shown on the plan and as appurtenant of the unit-

- (a) an easement of the subjacent and lateral support of the unit by the common property and by other unit capable of affording support;
- (b) an easement for the shelter of the unit by the common property and by other unit capable of affording shelter;
- (c) 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 the unit as appurtenant to the common property and also to every other unit capable of enjoying those easements; and
- (d) any other such rights as provided for under the Land Act.

Cap. 113

(2) Where an easement is implied by this section, the owner of any utility service providing a service to the common property or to any unit on it, shall be entitled to the benefit of any of the easements which are appropriate to the provision of the services, but not to the exclusion of the owner of any other utility service.

Implied easements, ancillary, rights and obligations

23.—(1) Easements or restrictions to ancillary rights and obligations to use implied or created by this Act or by by-laws shall take effect and be enforceable without any memorial notification on the parts of the Register constituting titles to the dominant or servient tenements.

(2) The ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of easements implied by this Act, including the right of an owner of a dominant tenement to enter a servient tenement and replace, renew or restore anything from which the dominant tenement is entitled to benefit.

Exclusive use of areas

24. An association may, if its by-laws permit, grant a lease to any owner permitting the owner exclusive use of a part of the common property.

Covenants benefiting common property

25. An association may, by a special resolution, accept a grant of easement or a restrictive covenant benefiting the common property.

Procedure for granting restrictive covenant

26.—(1) An association may, by a special resolution, accept a grant of easement or a restrictive covenant burdening the common property.

(2) Where a special resolution has been passed and the persons having registered interests have consented in writing, the association shall execute the appropriate instrument to grant the easement or covenant.

(3) An instrument granting an easement or covenant executed in accordance with subsection (2) and a receipt issued by the association for the moneys paid shall be sufficient proof of the validity of the transaction, receipt of the moneys and discharge of all persons from taking any responsibility for the application of the moneys expressed.

(4) The Registrar shall not register an instrument granting an easement or covenant authorised under this section unless it is accompanied by copies of the resolution and consent referred to in subsection (2).

Liability of unit
owner

27. The owner of a unit shall be liable in respect of an interest entered on the unit plan in proportion to the unit factor for his unit.

PART IV DISPOSITION

Disposition
Cap. 113

28.—(1) Subject to the provisions regarding the dispositions affecting land under the Land Act, each unit of the property constitutes a distinct object of real property and may be the subject of disposition by the owner in whole or in part.

(2) The disposition under subsection (1) shall include sale, mortgage, transfer, grant, partition, exchange, lease, assign, surrender or disclaimer, creation of an easement, a usufructuary right or any other servitude or interest in a right of occupancy, and in each case, the fractional share appurtenant to the unit, as well as the right to use the appurtenant restricted common areas, where applicable.

Sale of units by
developer

29.—(1) A developer shall not sell a unit or proposed unit unless he has delivered to the purchaser a copy of-

- (a) the sale agreement;
- (b) the existing or proposed by-laws;
- (c) the existing or proposed management agreement;
- (d) the existing or proposed recreational agreement;
- (e) the lease of the common property, if the common property on which the unit is located is held under a lease;
- (f) a certificate of title in respect of the unit or proposed unit;
- (g) any charge or proposed charge which may affect the title of the unit; and
- (h) the unit plan.

(2) A developer shall deliver to the purchaser in respect of a charge or proposed charge, a written notice indicating-

- (a) the maximum principal amount under the charge;

- (b) the maximum monthly payment, if any;
- (c) the amortisation period;
- (d) the grace period, if any;
- (e) the pre-payments terms, if any; and
- (f) the interest rate or the formula, if any, for determining the interest rate.

(3) Subject to subsection (4), a purchaser of a unit from a developer may, without incurring any liability for doing so, rescind the sale agreement within ten days after the date of its execution.

(4) A purchaser may not rescind the sale agreement under subsection (3), if all documents required to be delivered to the purchaser under subsection (1) have been delivered to him not less than ten days before the execution of the sale agreement by the parties to it.

(5) Where a sale agreement is rescinded under subsection (3), the developer shall, within ten days from receipt of written notice of the rescission, return to the purchaser all the money paid in respect of the purchase of the unit.

Sale by unit
owner or chargee

30.—(1) A co-owner or any other person who is not a developer shall, prior to completion of the sale of his units, furnish to a purchaser—

- (a) copies of the by-law;
- (b) the Association's current budget and financial statement;
- (c) a certificate containing a statement of the amount of assessments for common expenses against the unit; and
- (d) the amount of any unpaid common expense currently due and payable with respect to the unit, and of any other fees or charges payable by the co-owner of the unit.

(2) The association shall provide the documents and certificate required under subsection (1) within ten days of request from a co-owner or other person, subject to reasonable payment for the costs of reproduction.

(3) A person who acquires a unit, by whatever means, including the exercise of a mortgage right, shall be bound to pay all common expenses due in respect of that unit at the time of the acquisition and a purchaser of a unit shall not be liable for any common expenses, assessments or fees in excess of the amounts shown in the sale certificate of the association prepared in accordance with the Act.

Lease of units by
owner

31.—(1) The association may require an owner who rents his unit to pay to, and maintain with the Association, a deposit which the association may use for—

- (a) repair or replacement of the property of the association; and
- (b) maintenance, repair or replacement of any property which is subject to a lease granted to the owner of the unit under this Act which is damaged, destroyed, lost or removed, as the case may be, by a person occupying the unit.

(2) The owner of a unit shall, within seven days after a tenant begins to rent his unit, give the association notice in writing stating the name of the tenant occupying his unit and other particulars as provided in the by-laws.

(3) The owner of a unit shall, within seven days after a tenant ceases to rent his unit, give the association notice in writing stating that his unit is no longer being rented.

(4) An association shall, within twenty days after receiving a written notice under subsection (3)–

- (a) return the deposit referred to under subsection (1) to the owner;
- (b) if the association has made use of the deposit for one or more of the purposes referred to in subsection (1), deliver to the owner a statement of account showing the expenditure and the balance of the deposit not used, if any;
- (c) if the association is entitled to make use of the deposit, deliver to the owner, an estimated statement of account

showing the amount it intends to use and, within sixty days after delivering to the owner the estimated statement of account, deliver to the owner-

- (i) a final statement of account showing the amount used; and
- (ii) the deposit of the balance not used, if any.

Inheritance
Cap. 334

32. A disposition by way of inheritance shall be subject to the Land Registration Act.

Mortgage
Cap. 113

33. The unit owner shall have a right to mortgage his unit in accordance with the provisions of the Land Act.

Protection of
mortgagee

34.-(1) The association may enter into agreements with mortgagees holding mortgages on any unit by which the association agrees to-

- (a) give written notice to the mortgagee of any stage of facts or occurrence which actually or potentially affects adversely the physical or financial condition of the property;
- (b) give written notice of any delinquency in the payment of common expense by the co-owner of a unit on which the creditor holds a mortgage, or any intention of the association to enforce its claim to collect common expenses against a unit;
- (c) not to amend any material provision of the by-law without the consent of the mortgagees holding mortgages on the units;
- (d) not to take specified actions concerning the property without the approval of the mortgagees holding mortgages on the units, including:
 - (i) conveying or encumbering any of the common areas;
 - (ii) termination of the co-ownership; or
 - (iii) pledge or assignment of the future income or receivables of the association;

- (e) upon the request of any mortgagees, to provide a copy of the current financial statements of the association; or
- (f) other matters on which the association and mortgage creditors may agree and which do not contradict this Act.

(2) Agreements for the benefit of mortgagees may be included in the by-laws in which case, they shall constitute contractual obligations of the association toward any present or future mortgagee holding a mortgage on any unit.

(3) Upon acquiring ownership of a unit through enforcement of its rights under a mortgage, a mortgagee shall succeed to the rights and obligations of a co-owner.

PART V

MANAGEMENT OF THE UNIT PROPERTY

Establishment of
Association

35.—(1) There shall be established an association which shall be a body corporate and be given a plan number by the Registrar.

(2) The number to be included in the name of an association shall be a number allotted to the units plan by the Registrar on its registration.

(3) Five or more owners of the unit properties may form an association whose management shall be as provided for in this Act.

(4) Where there are less than five owners of a unit property, the owners shall register to the Registrar by-laws on the use of the common areas and management of the unit.

(5) The Registrar shall have powers to register associations under this Act.

Legal status of
association

36.—(1) An association-

- (a) shall have perpetual succession;
- (b) shall have a common seal; and
- (c) sue and be sued in its association name.

(2) The association shall have a common seal which shall be kept by the Secretary of the association and be authenticated by the signature of a Chairman or any other member authorised in writing by the Committee and the Secretary.

Developer
to provide
documents to
association

37.—(1) A developer shall, within six months after the date on which the unit plan is registered, provide the association, free of charge, with the following documents:

- (a) warranties and guarantees on the property of the association;
- (b) structural, electrical, mechanical and architectural working drawings and specification;
- (c) built drawings, if applicable, of the common property of the Association;
- (d) plan showing the location of underground utility services and sewer pipes;
- (e) agreements to which the association is a party, with a local authority, planning authority, the Government or an agent of the Government which relate to the property of the association; and
- (f) any other relevant documents.

(2) Notwithstanding subsection (1), the association may, at any time before it receives a document under subsection (1), require the developer to provide the association with any of the documents specified in subsection (1), and the developer shall provide the document within a period of twenty-one days, if the document is in his possession.

Representation
of members of
association

38.—(1) This section shall apply if a unit is owned by two or more persons whether as joint tenants or co-owners.

(2) The owners of the unit shall, by a notice in writing to the association, authorise an individual to represent them as their agent for the purpose of this Act.

(3) The unit owner's representative shall be one of the owners.

(4) The Companies Act and the Societies Act shall, for the purpose of this Act not apply.

Caps. 212
and 337

(5) Where a company is a co-owner of the unit, the company's own representative may also be authorised as the unit owners' representative.

(6) The notice of authorisation shall-

- (a) be given to the association within fourteen days after the lodgment for registration of the instrument under which the unit first becomes owned by two or more people;
- (b) include the full name and a physical address of the representative; and
- (c) be signed by each owner of the unit.

(7) The unit owners may change their representative by issuing a notice in writing to the association.

(8) The notice of change of authorisation shall include the full name and a physical address of the new representative, and be signed by each owner of the unit.

(9) The unit owner's representative may change the address by a notice in writing to the association of the change.

(10) The notice of change of address shall be signed by the representative.

(11) This section may be enforced in the same way as an Article of the Association of the company.

Company
owned units and
authorisation of
representatives

39.-(1) This section shall apply if a company is the owner or a co-owner of a unit.

(2) The company shall, by a notice in writing to the association, authorise an individual to represent it as its agent for the purpose of this Act.

(3) The company's representative shall be an officer or an employee of, or any other person appointed by the company.

(4) The notice of authorisation shall-

- (a) be given to the association within fourteen days after the lodgment for registration of the instrument under which the company becomes an owner or co-owner of the unit;
- (b) include the full name and a physical address of the representative; and

- (c) be signed by the company.
- (5) The company may change its representative by a notice in writing to the association.
- (6) The notice of change of authorisation shall-
 - (a) include the full name and a physical address of the new representative; and
 - (b) be signed by the company.
- (7) The company's representative may change the address by notice in writing of the change to the association.
- (8) The notice under subsection (7) shall be signed by the representative.

Functions of
association

- 40.**—(1) The functions of the association shall be to-
- (a) manage the common property;
 - (b) keep the common property in a state of good repair;
 - (c) establish and maintain a fund for administrative expenses sufficient, in the opinion of the association, for the control, management and administration of the common property, and for the payment of any insurance premiums, rent and the discharge of any other obligation of the association;
 - (d) determine from time to time the amounts to be paid for the purposes of paragraph (c);
 - (e) raise amount determined under paragraph (d) by levying contributions on the properties in proportion to unit entitlement of their respective units;
 - (f) insure and keep insured buildings and other improvements on the common property against fire;
 - (g) effect such other insurance as required by this Act, or as it may consider expedient;
 - (h) pay the premiums in respect of any policies of insurance effected by it;
 - (i) do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section;
 - (j) comply with any notice or order duly served on it by any competent local authority, planning authority or

public authority requires to, or work to be performed in respect of the land or any building or improvement on it;

- (k) submit new plans to the Registrar in case of alterations to the unit property;
- (l) do all things reasonably necessary for the enforcement of any lease or licence under which the land is held;
- (m) carry out any duties imposed on it by its by-laws made under this Act.

(2) The association shall be responsible for enforcement of its by-laws and the control, management and administration of its movable and immovable property and the common property.

(3) Without prejudice to subsection (1), the duties of association shall include-

- (a) keep in a state of good and serviceable repairs and properly maintain, the movable and immovable property of the association and the common property;
- (b) to comply with notices or orders from any local authority, planning authority or public utility authority requiring repairs to, or work to be done in respect of the common property.

(4) An association may, by special resolution, acquire or dispose of an interest in immovable property.

(5) The functions of the association shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the Committee.

(6) In addition to the functions specified in subsection (1), the Committee shall hear complaints from aggrieved members of the association.

(7) The association may, in accordance with the resolution of owners, distribute any surplus money or other movable property in its possession and surplus to its current requirement among the owners according to their unit entitlement.

Management
and investment
of moneys of
association

41. Notwithstanding subsection (7) of section 40, an association may invest any funds not immediately required by it, in accordance with by-laws of the association.

Dealings affecting
common property

42.—(1) An instrument evidencing any transfer, lease, grant of easement or other dealing affecting common property or land that is to become part of the common property, may be executed by an association, if the transfer, lease, grant or dealings has been approved by a special resolution of the association.

(2) A certificate under the seal of the association stating that approval has been given shall be sufficient evidence of the approval unless the contrary is proved.

(3) The association may, by a special resolution, transfer or lease the common property or any part of it, or grant an easement on the whole or part of the common property.

(4) A part of the common property may not be transferred or leased where that part of the common property is used as access by persons to one or more units.

(5) Where the Committee is satisfied that a special resolution under subsection (3) was properly passed and that all persons having registered interest, other than statutory interests notified to the association have—

(a) in case of either a transfer or lease, consented in writing to the release of the interests in respect of the land comprise in the proposed transfer; or

(b) in the case of a lease, approved in writing the execution of the proposed lease,

shall execute the appropriate transfer or lease.

(6) The transfer or lease executed in accordance with subsection (3) shall only be valid if—

(a) the transfer or lease is valid and effective without execution by any person having an interest in the common property; and

(b) the receipt by the association of the purchase money, rent, premiums or other money payable to the association

under the terms of the transfer or lease is a sufficient discharge of, and exonerates the persons taking under the transfer or lease from any responsibility for the application for the money expressed to have been received.

(7) The Registrar shall not register a transfer or lease authorised under this section unless it is accompanied by a certificate under the seal of the association to the effect that

- (a) the special resolution was properly passed;
- (b) the transfer or lease conforms with the terms of the transfer or lease; and
- (c) all necessary consent were given.

(8) The certificate referred to in subsection (7) in favour of a purchaser or lessee of the common property or part to it and endorsed by the Registrar shall be conclusive proof of the facts stated in the certificate.

Registration
of transfers of
common property

43.—(1) An instrument of transfer of any part of the common property shall, in addition to any plan that the Registrar may require to be deposited under this Act, be accompanied by a revised unit plan under the same number.

(2) Where any unit is subject to any existing registered charge, lease or sublease, the Registrar shall not register any transfer of the whole or any part or parts of the common property until there has been produced to him a consent in writing by a registered chargee and the consent shall not be unreasonably withheld, and the lessee and sublessee have been notified.

(3) The Registrar shall register any transfer to which subsection (1) refers by-

- (a) causing an appropriate record relating to the transfer to be noted on the revised unit plan and on the relevant part of the Register; and
- (b) issuing, in the name of the transferee, a certificate of title for the land transferred.

Voting rights

44.—(1) The voting rights of the owner of a unit shall be determined by the unit factor of the unit.

(2) Where an owner's interest is subject to a registered charge, a power of voting conferred on any owner by this Act or by the by-laws-

- (a) shall, where a special resolution is required, be exercised by the registered chargee first entitled in priority; and
- (b) in any other case, be exercised by the chargee in priority if he is present or by proxy.

(3) A chargee shall, upon registration of a charge, notify the association in writing of the charge.

(4) A chargee whose charge is entered on the part of the Register in accordance with subsection (1) of section 5, shall notify the association of the existence of the charge within three months after the coming into force.

(5) An association shall give notice of any meeting to chargee who has given notice of the charge under subsections (3) and (4).

(6) Subsection (2) shall not apply unless the chargee has given written notice of his charge to the association.

(7) An owner or chargee, as the case may be, may exercise his right to vote personally or by proxy.

Voting where
owner of unit is
incapable

45.-(1) In the case of an owner who for any reason is unable to exercise control over his property, any power of voting conferred to him by this Act or Regulations may, subject to subsection (2), be exercised by the guardian or a legal representative.

(2) Where the court, on application by the association or by an owner is satisfied that there is no person capable, willing or available to vote in respect of a unit, the court shall appoint a legal representative for the purpose of exercising the powers of voting under this Act or by the by-laws.

(3) Upon making an appointment under subsection (2), the court may make an order if it considers necessary or expedient to give effect to the appointment.

Meetings of
association

46. Where a developer registers a unit plan, he shall-

- (a) within ninety days after the day that fifty percent of the units are sold; or

(b) within one hundred and eighty days after the day that the first unit is sold,
whichever is sooner, convene a meeting of the association at which a Committee shall be elected.

Formation of
management
committee

47.—(1) There shall be, in respect of an association, a management Committee elected in accordance with the by-laws.

(2) An association shall, within fifteen days after a person becomes or ceases to be a member of the Committee, file at the Land Registry, a notice in the prescribed form, stating the name and address of that person and the day on which that person became or ceased to be a member of the Committee, as the case may be.

(3) Acts done in good faith by the Committee shall be valid, notwithstanding that any defect in the election or continuance in office of the Committee or any of its members had been properly elected or appointed or continued in office.

Annual general
meeting

48.—(1) A Committee shall, once in each year, convene an annual general meeting of the owners.

(2) The first annual general meeting of the owners shall be called within three months after the election of the Committee.

(3) The annual general meeting of the owners shall be convened by the Committee within fifteen months after the conclusion of the immediately preceding annual general meeting.

Appointment of
managing agent

49.—(1) The Committee shall, within twenty-eight days after its election, appoint a managing agent for the management of the units, the movable and immovable property of the association and the common property.

(2) The Minister shall, by regulations, prescribe the qualifications of a person to be appointed as a managing agent under this section.

(3) A managing agent shall perform functions as may be delegated to him by the association.

(4) Where a managing agent relinquishes his appointment, the Committee shall appoint a new managing agent within twenty days after the effective date of that relinquishment.

By-laws of
association

50.—(1) The association shall make by-laws prescribing for the management of units and properties of the association.

(2) The by-laws under subsection (1) may be amended or revoked by a special resolution.

(3) An amendment or revocation of a by-law shall not take effect until registered by the Registrar.

(4) The by-laws shall not operate to prohibit or restrict the devolution of units or any transfer, lease or other dealing in the units or to destroy or modify an easement implied or created by this Act.

(5) The by-laws shall bind the association and the owners to the same extent as the by-laws had been signed and endorsed by a common seal of the association and by each owner.

(6) The by-laws shall contain deed of covenants on the part of each owner with every other owner and with the association, to observe and perform all the provisions of the by-laws.

(7) The by-laws shall prescribe fines which may be imposed for breach of the by-laws.

Establishment
of association
register

51.—(1) An association shall establish and maintain a register that includes—

(a) the information mentioned in subsection (2) for each unit; and

(b) the information mentioned in subsection (3).

(2) The association shall record on the association register the following information for each unit:

(a) if the unit is owned by one person, the full name and an address of the unit owner;

(b) if the unit is owned by two or more people, the full name and address of the unit owners' representative and each co-owner;

- (c) if the unit owner, or one or more co-owners of the unit, is a company, the full name and address of the company's representative;
- (d) if a mortgagee voting notice has been given for the unit, the full name and address of the mortgagee's representative;
- (e) if notified to the association, the full name and an address of anyone else with an interest in the unit together with particulars of the interest;
- (f) the full name of the occupier of the unit, including the owner or any co-owner, if the owner or co-owner occupies the unit.

(3) In addition to paragraphs (a) to (f) of subsection (2), the association shall record on its register-

- (a) the full names of the current members;
- (b) if notified to the association, the full name and an address of anyone with an easement over the common property together with particulars of the easement.

(4) The association register may, in addition to hard copies, be kept in electronic form.

Information
for inclusion
in association
register

52.-(1) A unit owner shall give the association a notice in writing of the particulars of any of the events specified hereunder within fourteen days after the event happens-

- (a) the owner agreeing to transfer the lease of the unit to someone else;
- (b) the lodgment for registration, by the unit owner, of the instrument under which the person became the owner;
- (c) a change in the owner's name or his address;
- (d) a change of occupancy of the unit; or
- (e) a vacancy in occupancy of the unit that is expected to be longer than a continuous period of thirty days.

(2) Subsection (1) may be enforced in the same way as an article of the association.

(3) A person other than a unit owner, may give the association a notice in writing of the following particulars of the events:

- (a) the person agreeing to transfer an interest in the lease of a unit or the common property to someone else;
- (b) the lodgment for registration, by the person, of an instrument under which the person acquires an interest in a unit or the common property;
- (c) the person acquiring an interest in a unit or the common property other than a registered interest;
- (d) if the person has an interest in a unit or the common property, a change in the full name or address of the person; or
- (e) a change in the nature of an interest held by the person in a unit or the common property, including the person's ceasing to have the interest.

Access to
association
register

53.—(1) Upon request by an eligible person for a unit or the common property, the association shall allow the person, within fourteen days after the request is received, to inspect, and take a copy in the case of—

- (a) a request by an eligible person for a unit, the information on the association register about the unit and any easements with which the common property is benefited or burdened; or
- (b) a request by an eligible person for the common property, the information on the association register about any easements with which the common property is benefited or burdened.

(2) The association register shall be kept in a state that ensures that, a person who is entitled to inspect the register shall not have access to any other information the person is not entitled to inspect.

Disclosure of
information

54.—(1) Upon request by an eligible person for a unit or the common property the association shall, free of charge, allow the person to inspect and take a copy of the following documents within fourteen days after the request is received:

- (a) any current insurance policy or policies taken out by the association;

- (b) the receipts for all premiums paid under current policies taken out by the association; and
- (c) the part of the minutes of any annual general meeting of the association that records any exemption resolution on building insurance requirements.

(2) On request by an eligible person for a unit or the common property, the association shall, free of charge, give the person full names and addresses of its current executive members within fourteen days after the request is received.

Service of documents

55.—(1) A document may be served to the association by registered mail or by delivering it at the registered physical address or by personal service on a member of the Committee or a management agent.

(2) A service by association on an owner of a unit may be effected by-

- (a) personal service;
- (b) leaving it with an adult person who normally resides in the unit;
- (c) fixing it on conspicuous part of the unit; or
- (d) registered mail or any other means prescribed by by-laws of the association.

Change of address for service

56.—(1) An association may, by a resolution of the Committee change its address for service.

(2) A change made under subsection (1) shall not take effect until a notice of change is filed with the Registrar in the prescribe form.

Borrowing powers

57. An association may, if authorised by a special resolution-

- (a) borrow amounts required for the exercise of its functions; and
- (b) secure the repayment of amounts borrowed by it and the payment of interest on amounts borrowed by it.

General funds

58.—(1) An association shall establish a fund for the general administration of the association.

(2) Notwithstanding subsection (1), an association may, by special resolution, establish other funds for any particular purposes.

(3) The purposes for which a special purpose fund may be used may only be changed by special resolution of the association.

(4) A payment or transfer out of the administrative fund or a special purpose fund may only be made for a purpose for which the fund may be used, unless the association decides otherwise by special resolution.

(5) At each annual general meeting of an association, the association shall, by special resolution, approve a budget for the administrative fund and each special purpose fund for the financial year in which the meeting is held.

(6) The general funds budget shall state the total amounts estimated to be paid into and out of the association's general funds in the financial year in which the annual general meeting is held.

Contributions to
general funds

59.—(1) An association may determine the amount required by way of contributions from its members for the association's general funds.

(2) The general funds contribution payable for each unit shall be—

- (a) the proportional share for the unit of the total general funds contributions; or
- (b) a proportion of the total general funds contributions worked out in accordance with a method set out in a special resolution.

(3) A resolution under paragraph (b) of subsection (2) may provide that, only stated unit owners shall be required to pay a particular contribution or a contribution of particular kind.

(4) A resolution under paragraph (b) of subsection (2) may only be amended or revoked by special resolution.

(5) An association shall give notice of a determination of general funds contribution to each unit owner.

- (6) The notice shall include-
- (a) the general funds contribution payable for the unit;
 - (b) the general funds contributions payable for each other unit;
 - (c) the general funds for which contribution is required, the proportion of the contribution to be paid into each fund, and the total amount to be paid into each fund;
 - (d) the proportion of the total general funds contributions payable for the unit and how the proportion is worked out;
 - (e) the date when the contribution is payable, if paid in full which shall be not later than twenty-eight days after the date of the notice;
 - (f) if the contribution is payable by installments, the dates when the installments are payable;
 - (g) how the contribution may be paid;
 - (h) details of any discount for early payment under section 62; and
 - (i) details of interest payable for late payment under section 62.
- (7) A general fund contribution shall be payable by a unit owner-
- (a) if paid in full, on the date stated in the notice; or
 - (b) if payable by installments, on the dates stated in the notice.

Sinking funds

60.-(1) An association shall establish and maintain a fund under this section to be known as the sinking fund, unless there are only two or three units in the units plan and the association has passed a resolution deciding that it shall not establish or continue to maintain a sinking fund.

(2) Payments into the sinking fund may only be made-

- (a) in accordance with this Act;
- (b) by transfer from the administrative fund in accordance with an ordinary resolution; or
- (c) by transfer from a special purpose fund, in accordance with the purpose of the fund or a special resolution.

(3) An association may only make payments from its sinking fund for-

- (a) the painting or repainting of any building or any part of a building that forms part of the common property;
- (b) the acquisition, renewal or replacement of property that it holds;
- (c) the renewal, replacement or repair of fixtures and fittings that are part of the common property;
- (d) the renewal, replacement or repair of anything else on the common property;
- (e) any purpose that relates to a defined part of a building; and
- (f) any maintenance that is authorised by a special resolution of the Association.

(4) An association may only make a transfer from its sinking fund to a general fund if it is passed by the Committee.

Annual payments
in sinking funds

61.-(1) An association shall deposit into its sinking fund each financial year an amount raised by contributions of the unit share of the members of the association equal to five percent of the general funds budget expenditure.

(2) An association may, by special resolution at its annual general meeting, decide to vary the relevant percentage referred to in subsection (1).

(3) In this section-

- (a) “unit share”, of general funds budget expenditure, means the following proportion of the expenditure:

$$\frac{5\% \times \text{unit entitlement of all members units}}{\text{total unit entitlement}}$$

- (b) “general funds budget expenditure for a financial year”, means the estimate in the general funds budget for the year, as approved by the annual general meeting, of the total amount to be paid out of the association’s general funds in the year excluding transfers into the sinking fund.

(4) The sinking fund contribution payable for each unit for a financial year and for phased staged development shall be provided in the regulations.

Discount and
interest on
amounts owing

62.—(1) An association may, by special resolution, decide that a stated discount applies to an amount owing to the association by a unit owner if-

- (a) the amount is paid to the association before the date it becomes payable; or
- (b) for contributions payable by installments, if the contribution is paid in full on or before the date specified in the notice for payment in full, or if the contributions are paid in another way stated in the resolution.

(2) Where an amount owing to an association by a unit owner is not paid on or before the date it becomes payable, unless otherwise decided by special resolution, the amount shall bear simple interest until paid at-

- (a) an annual rate of not less than the prevailing market lending rate;
- (b) an annual rate of less than the prevailing market lending rate, if decided by special resolution; or
- (c) an annual rate of more than the prevailing market lending rate, if decided by special resolution.

(3) Interest on an amount owing to the association shall form part of the fund into which the amount is payable.

Recovery of
amounts owing

63.—(1) Where an amount owing to an association is not paid on or before the date it is payable, the association may recover the amount as a debt from the unit owner, together with interest as provided for under section 62.

(2) Where the ownership of a unit changes after an amount owing to the association becomes payable, the owner at the time the amount became payable and each subsequent owner shall be liable both separately and together for the amount, together with interest as provided for under section 62.

Liability of
co-owners

64.—(1) This section shall apply if-

- (a) a unit is owned by two or more people whether as joint tenants or tenants in common; and
- (b) an amount is recoverable by the association from the unit owners.

(2) The unit owners shall be liable separately and together for the payment of the amount.

(3) Each unit owner shall be liable for a part of the amount proportional to the value of the owner's interest in the unit.

(4) Where any co-owner pays a part of the amount that is more than the owner's proportional liability, the owner may recover the excess from the other owners.

Habitual
offenders

65.—(1) The association may refer to a court the case of an owner or tenant of a unit who habitually breaches the by-laws.

(2) For the purposes of this section, an owner or tenant of unit shall be deemed to be a habitual offender if he has breached the by-laws three or more times within a period of one month.

(3) The court may, upon hearing a case referred to it under this section, impose a fine as may be prescribed in the regulations.

Offences and
penalties

66. A person who contravenes any of the provisions of this Act, commits an offence and on conviction shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years.

PART VI DISPUTES RESOLUTIONS

Dispute
resolutions
Cap. 113

67. Notwithstanding the provisions regarding the disputes resolution or litigation affecting land under the provisions of the Land Act, dispute under this Act shall be determined as provided in this Part.

Suits for
and against
association

68. The association may sue or be sued in respect of any matter relating to the common property, common assets, by-laws or involving an act or omission of the association.

Mediation

69. A dispute among the members of the association in respect of any matters relating to the association shall first be brought before the association for mediation.

Litigation
Act No.
2 of 2010 s. 33

70. Notwithstanding the provisions of section 69, where mediation has failed, the aggrieved party may institute a case in the High Court or the District Land and Housing Tribunal.

Appointment of
administrator

71.—(1) The association, an owner, tenant, mortgagee or other person having an interest in a unit, may apply to the court for the appointment of an administrator to exercise the powers and perform the duties of the association.

(2) The court may appoint an administrator if, in the court's opinion, the appointment of an administrator is in the best interest of the association.

(3) The court may—

- (a) appoint the administrator for an indefinite or set period;
- (b) set the administrator's remuneration;
- (c) order the administrator to exercise or perform some or all of the powers and duties of the association; and
- (d) relieve the association of some or all of its powers and duties.

(4) The remuneration and expenses of the administrator shall be paid by the association.

(5) The Administrator may delegate any of his powers.

(6) Upon application of the administrator or a person referred to in subsection (1), the court may remove or replace the administrator or vary an order under this section.

PART VII

TERMINATION OF UNIT STATUS

Application to
terminate unit
status

72.—(1) An association, may apply to the court to terminate the unit status of a building or land.

(2) On an application pursuant to this section, the court may—

- (a) make an order terminating the unit status of a building or land, if it is satisfied that it is just and equitable to do so, having regard to the rights and interests of the owners as a whole; and

(b) for the purpose of adjusting the effect of the order as between the corporation, the owners and the holders of registered interests based on mortgages and as amongst the owners themselves, impose any conditions and give any directions, including directions for the payment of moneys, that it considers appropriate.

(3) An insurer who has affected insurance on the building or land or any part of it against destruction of units or damage to the building or land may appear in person or by agent or counsel on an application pursuant to this section.

Dissolution of
association

73. On the termination of the unit status of a building or land pursuant to section 72, the association shall be dissolved.

Application for
disposition of
assets

74.—(1) Upon termination of the unit status under section 73, an owner or a holder of a registered interest based on a mortgage may make an application to the court for an order directing the disposition of the assets of the association.

(2) Subject to subsection (1), the court may make any order in respect of the disposition of the assets that it considers to be fair and equitable.

Notice of
termination of
unit status

75.—(1) On the termination of the unit status of the building or common property pursuant to section 71, the association shall immediately—

- (a) file a notice of the termination of unit status in the prescribed manner with the Registrar; and
- (b) apply to register an interest based on the notice against the titles issued pursuant to the unit plan.

(2) The owners of the units in a unit plan pursuant to which titles have issued shall be entitled to the common property as tenants in common in shares proportional to the unit factors of their respective units when an interest is registered.

(3) An application to issue titles for the common property may be submitted to the Registrar in the prescribed manner.

(4) On receipt of an application referred to in subsection (3), the Registrar shall—

- (a) cancel the ownership register for each unit in the plan;
- (b) cancel the titles to each unit in the plan;
- (c) establish an ownership register for the common property; and
- (d) issue in the names of the owners titles in accordance with subsection (2).

(5) An interests registered against the titles that were cancelled pursuant to paragraph (b) of subsection (4) shall be registered in the prescribed manner against the titles issued pursuant to that paragraph.

Transfers of
part of common
property

76.—(1) Where the unit status of a building or land is being terminated, the association may, on special resolution, transfer the common property or any part of the common property.

(2) The association shall execute a transfer where the Committee is satisfied that-

- (a) a special resolution was properly passed; and
- (b) written consents to the release of interests in the property included in the proposed transfer have been obtained from all persons who have registered interests in the common property.

(3) Transfers executed pursuant to subsection (2) shall be valid and effective without execution by any person who has an interest in the common property.

(4) The receipt of the association for the monies payable pursuant to a transfer executed under subsection (2), shall discharge the person to whom the receipt is given from any responsibility for the application of the monies.

New plan
required

77. Before a transfer referred to in section 76, the Registrar may, if he considers necessary, require a new unit plan or an amended plan be submitted and be approved.

Registration of
transfers

78.—(1) A transfer executed pursuant to section 76 shall not be submitted for registration unless-

- (a) the transfer is accompanied by a certificate under the seal of the association stating that the resolution

was properly passed and all necessary consents were obtained; and

(b) the interest based on the notice required by section 75 has been registered against the titles.

(2) The certificate mentioned in subsection (1) shall be conclusive proof of the facts stated in it in favour of a purchaser of the common property.

(3) Where the common property is transferred pursuant to section 76, the Registrar shall take necessary steps to give effect to the transfer.

Winding-up
order

79.—(1) On the application by an association, any member of an association or an administrator appointed pursuant to section 71, the court may make an order providing for the winding-up of the affairs of the association.

(2) By the same or a subsequent order, the court may declare the association dissolved on and from a day specified in the order.

PART VIII

GENERAL POVISIONS

Taxes, rates,
charges, etc.

80.—(1) For purposes of assessing rates by any relevant authority, each unit and common property shall constitute a separate entity.

(2) An owner of a unit shall be liable for any rate, charge or tax levied by a relevant authority in relation to his property.

(3) The association shall be liable to any rate, charge or tax levied by a relevant authority in relation to the common property.

Insurance of
common property

81.—(1) The association shall, on its own and on behalf of the owners, obtain and maintain an insurance policy covering the unit and common properties.

(2) The insurance provided for under subsection (1) shall cover ordinary risks, namely-

- (a) fire;
- (b) theft;
- (c) explosions;
- (d) water escapes; and
- (e) vandalism and malicious acts, as provided for in the relevant laws.

(3) Notwithstanding the provisions of this section, the insurance policy under subsection (1) shall not cover-

- (a) improvements made by a co-owner to his units;
- (b) damages caused by faulty, improper material or workmanship.

(4) The insurance policy provided for under subsection (1) shall have a clause which prohibits the insurer to terminate the insurance contract unless a two months notice is given to an association.

(5) The amount insured under subsection (1) shall cover the replacement cost of the property damaged as provided for under the relevant policy.

(6) The amount received under subsection (5) shall be used by the association to repair or replace the damaged units or common property, or to offset the cost incurred by the association if the association paid for the repair or replacement.

(7) The insurance policy provided for under this Part shall not exclude a right of the owner to insure against-

- (a) loss of damaged to the owner's unit; or
- (b) his interest in the common property.

(8) The association shall, in addition to an insurance under subsection (1), obtain and maintain-

- (a) an insurance against its liability arising from breach of duty as occupier of common property or land that the association holds as an asset;
- (b) an insurance against liability arising from the ownership and use of various machineries and other equipment.

(9) An insurer under the insurance policy required under this Part shall provide to the association with certificates, policies and any other relevant documents declaring the coverage carried by the association on behalf of the owners.

(10) Where a lessee or an owner or any other person residing in the owner's unit with the permission or knowledge of the owner, damages the unit, the amount of repairing and the deductible limit of the insurance policy obtained by the association shall be added to the common expenses payable for the owner's unit.

Transformation of
existing houses

82. The Minister may make regulations prescribing procedures on how existing houses may be transformed into unit titles.

Regulations

83.—(1) The Minister may make regulations for the promotion and furtherance of objects and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations prescribing—

- (a) registration of properties under this Act;
- (b) manner under which the association may operate;
- (c) management structure of less than five owners of a unit;
- (d) properties to be insured under this Act;
- (e) matters relating to taxation of properties under this Act;
- (f) rates to be charged under this Act;
- (g) procedures to be followed by an owner on termination of insurance;
- (h) offences and penalties under this Act;
- (i) contribution by owners on maintenance of common property;
- (j) common properties which can be transferable;
- (k) qualification of a person to be appointed as a managing agent; and
- (l) anything which may be prescribed under this Act for purposes of giving effect to the provisions of this Act.

(3) Notwithstanding any provisions of this section, the Minister may, by order and after consultation with a Minister responsible for finance, issue tax incentives to developers.