



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# CONDOMINIUM ACT

## PLEASE NOTE

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## CONDOMINIUM ACT

### CHAPTER C-16

#### 1. Definitions

##### (1) In this Act

- (a) “**board**” means the board of directors of a corporation;
- (b) “**buildings**” means the buildings included in a property;
- (c) “**bylaw**” means a bylaw of a corporation;
- (d) “**claim**” includes a right, title, interest, incumbrance or demand of any kind affecting land, but does not include the interest of an owner in his unit and common interest;
- (e) “**common elements**” means all the property except the units;
- (f) “**common expenses**” means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common expenses in a declaration;
- (g) “**common interest**” means the interest in the common elements appurtenant to a unit;
- (h) “**corporation**” means a corporation incorporated by this Act;
- (i) “**declarant**” means the owner in fee simple of the land described in the description at the time of the registration of a declaration and description of the land, and includes any successor or assignee of such owner but does not include a purchaser in good faith of a unit who actually pays fair market value or any successor or assignee of such purchaser;
- (j) “**declaration**” means the declaration specified in section 3, and includes any amendments;
- (k) “**description**” means the description specified in section 4;
- (l) “**incumbrance**” means a claim that secures the payment of money or the performance of any other obligation, and includes a charge, a mortgage and a lien;
- (m) “**owner**” means the owner of a freehold estate in a unit and common interest, but does not include a mortgagee unless in possession;
- (n) “**prescribed**” means prescribed by the regulations;
- (o) “**property**” means the land and interest appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements;
- (p) “**proposed unit**” means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed or transfer capable of registration after a declaration and description have been registered in respect of the land;
- (q) “**registered**” means registered under the *Registry Act* R.S.P.E.I. 1988, Cap. R-10;
- (r) “**regulations**” means the regulations made under this Act;
- (s) “**unit**” means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all

the material parts of the land within this space at the time the declaration and description are registered;

- (t) “**vacant land unit**” means a unit defined by delineation of its horizontal boundaries without reference to any building, the boundaries of which shall be deemed to extend vertically upward and downward without limit.

**Ownership of land**

- (2) For the purposes of this Act, the ownership of land includes the ownership of space.  
*1977,c.6,s.1; 1997,c.10,s.1.*

## DECLARATION AND DESCRIPTION

**2. Freehold land only**

- (1) A property shall comprise only freehold land and interests, if any, appurtenant to that land.

**Who may register**

- (2) Subject to this Act and the regulations, a declaration and description may be submitted for registration under section 5 by or on behalf of the owner in fee simple of the land described in the description.

**Effect of registration**

- (3) Upon registration under section 5 of a declaration and description, the land and the interests appurtenant to the land described in the description are governed by this Act. *1977,c.6,s.2; 2009,c.68,s.1.*

**3. What declaration must contain**

- (1) A declaration submitted for registration under section 5 shall be executed by the owner of the land and interest appurtenant to the land described in the description and shall contain
- (a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;
  - (b) the consent, in the prescribed form, of all persons having registered incumbrances against the land or interests appurtenant to the land described in the description;
  - (c) a statement, expressed in percentages, of the proportions of the common interests;
  - (d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses;
  - (e) an address for service;
  - (f) a specification of common expenses;
  - (g) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;
  - (h) provisions respecting the occupation and use of the units and common elements;
  - (i) provisions restricting gifts, leases and sales of the units and common interests;
  - (j) provisions regulating the assessment and collection of contributions towards the common expenses;
  - (k) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation;



- (l) a specification of any provision requiring the corporation to purchase the units and common interests of any dissenters after a substantial addition, alteration or improvement to or renovation of the common elements has been made or after the assets of the corporation have been substantially changed; and
- (m) a specification of any allocation of the obligations to repair and to maintain the units and common elements.

**What declaration may contain**

- (2) In addition to the matters mentioned in subsection (1), a declaration may contain
  - (a) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board;
  - (b) a specification of duties of the corporation consistent with its objects;
  - (c) a specification of the majority required to make bylaws of the corporation;
  - (d) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs under section 22;
  - (e) a specification of the majority required for a sale of the property or of part of the common elements;
  - (f) a specification of the majority required for the termination of the government of the property by this Act; and
  - (g) any other matters concerning the property.

**Amendment of declaration**

- (3) The declaration may be amended only with the consent of all owners and all persons having registered incumbrances against the units and common interests.

**Registration**

- (4) When a declaration is amended, the corporation shall register a copy of the amendment executed by all the owners and all persons having registered incumbrances against the units and common interests, and until the copy is registered the amendment is ineffective.

**Change of address for service**

- (5) Notwithstanding subsections (3) and (4), the corporation may by resolution of the board change its address for service and the change does not take effect until a notice thereof in the prescribed form is registered.

**Amendment by judge**

- (6) The corporation on at least seven days notice to every owner, or an owner on at least seven days notice to the corporation and every other owner, may apply to a judge of the Supreme Court for an order amending the declaration or description and the judge, if he is satisfied that an amendment is necessary or desirable to correct a manifest error or inconsistency in the declaration or description or arising out of the carrying out of the intent and purpose of the declaration or description, may make the order.

**Registration**

- (7) An amendment to a declaration or description made by an order under subsection (6) is ineffective until a certified copy of the order is registered. *1977,c.6,s.3; 2009,c.68,s.2.*

**4. What description must contain**

- (1) A description shall contain
- (a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;
  - (b) structural plans of the buildings;
  - (c) a specification of the boundaries of each unit by reference to the buildings;
  - (d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
  - (e) a certificate of a competent professional authority that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and
  - (f) a description of any interests appurtenant to the land that are included in the property, prepared in accordance with the regulations.

**Vacant land units**

- (1.1) A description of a vacant land unit shall contain such information as may be prescribed.

**Approval of description**

- (2) Repealed by 2009, c.68, s.3. 1977, c.6, s.4; 1980, c.2, s.3; 1997, c.10, s.2; 2009, c.68, s.3.

## REGISTRATION

**5. Index**

- (1) Every registrar of deeds in whose office a declaration and description are registered shall keep an index in the prescribed form to be known as the “Condominium Corporations Index”.

**Condominium Register**

- (2) Every registrar of deeds in whose office a declaration and description are registered shall keep a register in the prescribed form to be known as the “Condominium Register”.

**This Act to govern registrations, etc.**

- (3) Declarations, descriptions, bylaws, notices of termination, and other instruments respecting land governed by this Act shall be registered and recorded in the Condominium Register in accordance with this Act and the regulations but, except as otherwise provided by this Act and the regulations, the *Registry Act* applies in respect of property governed by this Act. 1977, c.6, s.5.

## UNITS AND COMMON ELEMENTS

**6. Nature of units and common interests**

- (1) Units and common interests are real property for all purposes.

**Ownership of units**

- (2) Subject to this Act, the declaration and the bylaws, each owner is entitled to exclusive ownership and use of his unit.





**Dangerous activities**

- (3) No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that are likely to damage the property.

**Right to enter**

- (4) The corporation or any person authorized by the corporation may enter any unit to perform the objects and duties of the corporation but except
- (a) in cases of emergency;
  - (b) with the consent of the owner given at the time of entry; or
  - (c) where the owner abandons the unit,

the corporation shall not exercise the right of entry unless it has first given written notice to the owner at least twenty-four hours before the time of entry, which shall be between the hours of eight o'clock in the forenoon and nine o'clock in the afternoon and specified in the notice. 1977,c.6,s.6.

**7. Ownership of common elements**

- (1) The owners are tenants in common of the common elements.

**Common interests**

- (2) An undivided interest in the common elements is appurtenant to each unit.

**Proportions**

- (3) The proportions of the common interests are those expressed in the declaration.

**Use of common elements**

- (4) Subject to this Act, the declaration and the bylaws, each owner may make reasonable use of the common elements.

**Ownership not to be separated**

- (5) The ownership of a unit shall not be separated from the ownership of the common interest, and any instrument that purports to separate the ownership of a unit from a common interest is void.

**No division**

- (6) Except as provided by this Act, the common elements shall not be partitioned or divided.

**Encumbrances not enforceable**

- (7) No incumbrance is enforceable against the common elements after the declaration and description are registered.

**Saving**

- (8) Where, but for subsection (7), an incumbrance would be enforceable against the common elements, the incumbrance is enforceable against all the units and common interests.

**Discharge**

- (9) Any unit and common interest may be discharged from such an incumbrance by payments to the claimant of a portion of the sum claimed determined by the proportions specified in the declaration for sharing the common expenses.

**Idem**

- (10) Upon payment of a portion of the incumbrance sufficient to discharge a unit and common interest, and upon demand, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations.

**Where corporation deemed to be occupier**

- (11) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements. *1977,c.6,s.7.*

## EASEMENTS

### 8. Easements appurtenant to units

- (1) The following easements are appurtenant to each unit:
1. Where a building or any part of a building
    - (a) moves after registration of the declaration and description; or
    - (b) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and description,an easement for exclusive use and occupation in accordance with this Act, the declaration and the bylaws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.
  2. An easement for the provision of any service through any installation in the common elements or any other unit.
  3. An easement for support by the common elements and any other unit capable of providing support.

### Easements appurtenant to common elements

- (2) The following easements are appurtenant to the common elements:
1. An easement for the provision of any service through any installation in any unit.
  2. An easement for support by any unit capable of providing support. *1977,c.6,s.8.*

### 9. Easements and leases of common elements

- (1) The corporation may, by bylaw
- (a) lease any part of the common elements, except any parts that the declaration specifies are to be used by the owners of one or more designated units and not by all the owners; and
  - (b) grant or transfer an easement or license through the common elements.

### Binding on all owners

- (2) A lease or a grant or transfer of an easement or license mentioned in subsection (1), signed by the authorized officers of the corporation under its seal, affects the interest of every owner in the common elements as if the lease, grant or transfer had been executed by him, and shall have attached thereto an affidavit of one of the officers stating that the lease, grant or transfer was authorized by a bylaw of the corporation. *1977,c.6,s.9.*



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## CORPORATION

### 10. Creation

- (1) The registration of a declaration and description creates a corporation without share capital whose members are the owners from time to time.

#### **Name of corporation**

- (2) When a declaration and description are registered, the registrar of deeds in whose office they are registered shall assign a name to the corporation in accordance with the regulations.

#### **Objects**

- (3) The objects of the corporation are to manage the property and any assets of the corporation.

#### **Board of directors**

- (4) The affairs of the corporation shall be managed by a board of directors, consisting of three persons or such greater number as the declaration or bylaws may provide, elected by the members of the corporation.

#### **Term**

- (5) The term of the members of the board shall be three years or such lesser period as the declaration or bylaws may provide, but the members of the board may continue to act until their successors are elected, and members are eligible for *re*-election.

#### **Vacancy**

- (6) If a vacancy in the membership of the board occurs, the majority of the remaining members of the board may appoint any person qualified to be a member of the board under the declaration or bylaws to fill the vacancy for the remainder of the term.

#### **Removal**

- (7) Any director may be removed before the expiration of his term by a vote of members who together own a majority of the units and the members may elect any person qualified to be a member of the board under the declaration or bylaws for the remainder of the term of the director removed.

#### **Quorum**

- (8) A quorum for the transaction of business is a majority of the members of the board or such greater number as the declaration or bylaws may provide.

#### **Defects**

- (9) The acts of a member of the board or an officer of the board are valid notwithstanding any defect that may afterwards be discovered in his election or qualifications.

#### **Officers and executive**

- (10) The declaration or the bylaws may specify and regulate the qualification, nomination, election, compensation and removal of members of the board, and the meetings, functions and officers of the board.

#### **Records**

- (11) The corporation shall keep adequate records, and any member of the corporation may inspect the records on reasonable notice and at any reasonable time.

**Duty to effect compliance**

- (12) The corporation has a duty to effect compliance by the owners with this Act, the declaration and the bylaws.

**Duties**

- (13) The declaration or the bylaws may specify duties of the corporation consistent with its objects.

**Right to performance of duties**

- (14) Each member of the corporation, and each person having an incumbrance against a unit and common interest has the right to the performance of any duty of the corporation specified by this Act, the declaration and the bylaws.

**Real and personal property**

- (15) The corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the property.

**Interest in assets**

- (16) The members of the corporation share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the bylaws.

**Judgments against corporation**

- (17) A judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses.

**Actions by corporation respecting common elements**

- (18) Any action with respect to the common elements may be brought by the corporation and a judgment for the payment of money in favour of the corporation in such an action is an asset of the corporation.

**Termination**

- (19) When the owners and the property cease to be governed by this Act
- (a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation;
  - (b) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interests. *1977, c.6, s.10.*

**11. Annual meetings**

- (1) A corporation shall hold an annual meeting of the members not more than three months after the registration of the declaration and description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting any member of the corporation or any mortgagee or chargee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the corporation.

**Other meetings**

- (2) The board may at any time call a meeting of the members of the corporation for the transaction of any business, the nature of which shall be specified in the notice calling the meeting.



**Requisition for members meeting**

- (3) The board shall, upon receipt of a requisition in writing made by members of the corporation who together own at least twenty-five per cent of the common elements, call and hold a meeting of the members of the corporation and if the meeting is not called and held within thirty days of receipt of the requisition, any of the requisitionists may call the meeting, and in such case, the meeting shall be held within sixty days of receipt of the requisition.

**Requisition**

- (4) The requisition shall state the nature of the business to be presented at the meeting, and shall be signed by the requisitionists and deposited at the address for service of the corporation.

**Notice**

- (5) At least ten days written notice of every meeting of the members of the corporation specifying the place, the date and the hour thereof and the nature of the business to be presented shall be given to each member and to each mortgagee or chargee entitled to vote, personally or by prepaid mail addressed to him at the address provided under subsection (6).

**Record for notice**

- (6) The corporation shall maintain a record upon which shall be entered each owner or mortgagee or chargee who notifies the corporation of his entitlement to vote and of his address for service and the notice of a meeting required by subsection (5) shall be deemed to be sufficiently given if given in accordance with subsection (5) to those persons entered on the record twelve days before the date of the meeting.

**Right to vote**

- (7) A mortgagee or chargee who receives a notice shall in order to be entitled to exercise the right of the owner to vote or to consent, notify the corporation and the owner of his intention to exercise such right at least two days before the date specified in the notice for the meeting.  
*1977,c.6,s.11.*

**12. Election of new board**

- (1) The board elected at a time when the declarant owns a majority of the units shall, not more than twenty-one days after the declarant ceases to be the registered owner of a majority of the units, call a meeting of the members of the corporation to elect a new board of directors, and such meeting shall be held within twenty-one days after the calling of the meeting.

**Members, etc., may call meeting**

- (2) If the meeting referred to in subsection (1) is not called within the time provided for by that subsection any member of the corporation or any mortgagee or chargee entitled to vote may call the meeting. *1977,c.6,s.12.*

**BYLAWS****13. Bylaws**

- (1) The corporation may, by a vote of members who own sixty-six and two-thirds per cent, or such greater percentage as is specified in the declaration, of the common elements, make bylaws
- (a) governing the management of the property;

- (b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;
- (c) governing the use of the common elements;
- (d) regulating the maintenance of the units and common elements;
- (e) governing the use and management of the assets of the corporation;
- (f) respecting the board;
- (g) specifying duties of the corporation;
- (h) regulating the assessment and collection of contributions towards the common expenses;
- (i) authorizing the borrowing of money to carry out the objects and duties of the corporation;
- (j) respecting the conduct generally of the affairs of the corporation.

**Bylaws must be reasonable**

- (2) The bylaws shall be reasonable and consistent with this Act and the declaration.

**Registration**

- (3) When a bylaw is made by the corporation, the corporation shall register a copy of the bylaw together with a certificate executed by the corporation that the bylaw was made in accordance with this Act, the declaration and the bylaws, and until the copy and certificate are registered the bylaw is ineffective. *1977,c.6,s.13.*

## RULES GOVERNING USE OF COMMON ELEMENTS

**14. House rules**

- (1) The bylaws may provide for the making of rules by members of the corporation who together own a majority of the units respecting the use of the common elements for the purpose of preventing unreasonable interference with the use and enjoyment of the units and common elements.

***Idem***

- (2) The rules shall be reasonable and consistent with this Act, the declaration and the bylaws.

**Compliance and enforcement**

- (3) The rules shall be complied with and enforced in the same manner as the bylaws. *1977,c.6,s.14.*

## OBLIGATIONS OF OWNERS

**15. Obligations and rights of owners, etc.**

- (1) Each owner is bound by and shall comply with this Act, the declaration and the bylaws.

***Idem***

- (2) Each owner has a right to the compliance by the other owners with this Act, the declaration and the bylaws.



**Right of corporation and incumbrances**

- (3) The corporation, and any person having an incumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration and the bylaws. *1977,c.6,s.15.*

**16. Duty of owners to contribute to common expenses**

- (1) The owners shall contribute towards the common expenses in the proportions specified in the declaration.

**Assessment and collection**

- (2) The assessment and collection of contributions towards the common expenses may be regulated by the declaration or the bylaws.

**No avoidance**

- (3) The obligation of an owner to contribute toward the common expenses shall not be avoided by waiver of the right to use the common elements or by abandonment.

**Lien**

- (4) Where an owner defaults in his obligation to contribute to the corporation toward the common expenses in the proportion allocated to his unit, the corporation has a lien for the unpaid amount against that unit and its appurtenant common interest.

**Expiration of lien**

- (5) The lien mentioned in subsection (4) expires three months after the default that gave rise to the lien first occurred unless the corporation within that time registers a notice of lien in the prescribed form.

**Certificate of lien**

- (6) Any person acquiring an interest in a unit from an owner may, with the consent of the owner, request the corporation to give a certificate in the prescribed form in respect of the common expenses of the owner and of default in payment thereof, if any, by the owner, and the certificate binds the corporation as against the person requesting the certificate in respect of any default or otherwise shown in the certificate, as of the day it is given.

***Idem***

- (7) The corporation shall give the certificate requested under subsection (6) within seven days after its receipt of the request therefor and where the corporation fails to give the certificate within the time prescribed, the corporation shall be deemed, as against the person requesting the certificate, to have given a certificate stating no default.

**How enforceable**

- (8) The lien mentioned in subsection (4) may be enforced in the same manner as a mortgage.

**Discharge**

- (9) Upon payment of the unpaid amount and upon demand, the corporation shall give the owner a discharge in the prescribed form. *1977,c.6,s.15.*

## MODIFICATIONS OF COMMON ELEMENTS AND ASSETS

### 17. Substantial alterations

- (1) The corporation may by a vote of members who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements make any substantial addition, alteration or improvement to or renovation of the common elements or may make any substantial change in the assets of the corporation, and the corporation may by a vote of a majority of the members make any other addition, alteration or improvement to or renovation of the common elements or may make any other change in the assets of the corporation.

#### Easement

- (2) A grant or transfer of an easement to the corporation is as effective as if the corporation owns land capable of being benefited by the easement.

#### Cost

- (3) The cost of any addition, alteration or improvement to or renovation of the common elements and the cost of any substantial change in the assets of the corporation are common expenses.

#### Dissenters

- (4) The declaration may provide that, if any substantial addition, alteration or improvement to or renovation of the common elements is made, or if any substantial change in the assets of the corporation is made, the corporation must, on demand of any owner who dissented, purchase his unit and common interest.

#### Arbitration

- (5) Where the corporation and the owner who dissented do not agree as to the purchase price, the owner who dissented may elect to have the fair market value of his unit and common interest determined by arbitration under the *Arbitration Act* R.S.P.E.I. 1988, Cap. A-16 by serving a notice to that effect on the corporation. *1977,c.6,s.17.*

## INSURANCE

### 18. Insurance by corporation on units and common elements

- (1) The corporation shall obtain and maintain insurance on the units and the common elements, excluding improvements and betterments made or acquired by the owner, against fire to the replacement value thereof, and against such other perils as may be specified by the declaration or bylaws to the amount required by the declaration or the bylaws, and for this purpose the corporation shall be deemed to have an insurable interest in the units and the common elements.

#### Payment to corporation

- (2) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to the order of the insurance trustees designated by the declaration or bylaws of the corporation, if any, or otherwise shall be paid to or to the order of the corporation, and, subject to sections 22 and 23, the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may be effected lawfully.





**Insurance by owners**

- (3) Insurance obtained and maintained by a corporation under subsection (1) shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to his unit or his interest in the common elements by fire or other peril and covering only to the extent that the insurance placed by the corporation is inapplicable, inadequate or ineffective.

**Contribution re policy under subs.(1)**

- (4) Notwithstanding section 116 of the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4 or the provisions of the policy, a policy of insurance issued under subsection (1) and any other policy of insurance except another policy issued under subsection (1) are not liable to be brought into contribution with each other.

**Insurance by corporation for liability re common elements**

- (5) The corporation shall obtain and maintain such insurance as may be specified in the declaration or bylaws against its liability resulting from breach of duty as occupier of the common elements.

**Other insurance**

- (6) Nothing in this section shall be construed to restrict the capacity of a corporation, an owner or any other person to obtain and maintain insurance in respect of any insurable interest. *1977,c.6,s.18.*

## MANAGEMENT AGREEMENT

**19. Management**

The corporation may, by a vote of members who own sixty-six and two-thirds per cent of the common elements, terminate, on giving sixty days notice in writing, any agreement between the corporation and any person for the management of the property entered into at a time when the majority of the members of the board of directors were elected when the declarant was the registered owner of a majority of the units. *1977,c.6,s.19.*

## INVESTIGATION OF RECORDS

**20. Examination of records**

- (1) Every person in receipt of money paid by or on behalf of an owner for the payment of common expenses, shall upon reasonable notice and during normal business hours, make available for examination by the corporation or any owner, mortgagee or chargee, all records relating to the disposition of such money.

**Application to court**

- (2) Upon application to a judge of the Supreme Court by the corporation or any owner, mortgagee or chargee, the judge, if satisfied that the application is made in good faith and that it is *prima facie* in the best interests of the applicant to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as he considers proper, appointing an inspector to make such investigation of the affairs of any person in receipt of money mentioned in subsection (1) and to make such audit of the accounts and records of such person as the judge considers necessary.

**Powers of inspectors**

- (3) An inspector appointed under subsection (2) has the powers of a commissioner under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31, which Act applies to such investigation or audit as if it were an inquiry under that Act.

**Trust money**

- (4) All money received for the payment of common expenses relating to a property shall be held by the person in receipt thereof in trust for the performance of the duties and obligations in respect of which the money is paid, and he shall pay such money into a separate account at a chartered bank or trust company or a loan company authorized by law to receive money on deposit and shall designate the account as a trust account. *1977,c.6,s.20.*

## REPAIRS AND MAINTENANCE

**21. Interpretation**

- (1) For the purposes of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the obligation to repair after damage does not include the repair of improvements made to units after registration of the declaration and description.

**Duty to repair**

- (2) Subject to section 22, the corporation shall repair the units and common elements after damage.

**Maintenance of common elements**

- (3) The corporation shall maintain the common elements.

**Maintenance of units**

- (4) Each owner shall maintain his unit.

**Declaration may provide otherwise**

- (5) Notwithstanding subsections (2), (3) and (4), the declaration may provide that
- (a) each owner shall, subject to section 22, repair his unit after damage;
  - (b) the owners shall maintain the common elements or any part of the common elements;  
or
  - (c) the corporation shall maintain the units.

**Where corporation to make repairs for owners**

- (6) The corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time.

**Consent**

- (7) An owner shall be deemed to have consented to have repairs done to his unit by the corporation under this section. *1977,c.6,s.21.*



## WHERE DAMAGE OCCURS

### 22. Determination of damage

- (1) Where damage to the buildings occurs, the board shall determine within thirty days of the occurrence whether there has been substantial damage to twenty-five per cent, or such greater percentage as is specified in the declaration, of the buildings.

#### Vote for repair

- (2) Where there has been a determination that there has been substantial damage to twenty-five per cent, or such greater percentage as is specified in the declaration, and owners who own eighty per cent of the common elements, or such greater percentage as is specified in the declaration, vote for repair within sixty days of the determination, the corporation shall repair. *1977, c.6, s.22.*

## TERMINATION

### 23. Termination by notice after substantial damage

- (1) Where on a vote the owners do not vote for repair, the corporation shall, within ten days of the vote, register a notice of termination in the prescribed form.

#### *Idem*

- (2) Where there has been no vote within sixty days of the determination that there has been substantial damage under subsection 22 (1), the corporation shall, within ten days after the expiry of the sixty-day period, register a notice of termination in the prescribed form.

#### Effect of registration of notice

- (3) Upon the registration of a notice of termination under subsection (1) or (2)
  - (a) the government of the property by this Act is terminated;
  - (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
  - (c) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;
  - (d) incumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description, and have the same priority they had before the registration of the notice of termination; and
  - (e) all claims against the property created after the registration of the declaration and description, other than the incumbrances mentioned in clause (d), are extinguished. *1977, c.6, s.23.*

### 24. Termination by sale

- (1) Sale of the property or any part of the common elements may be authorized
  - (a) by a vote of owners who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements; and

- (b) by the consent of the persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description.

**Execution of conveyance**

- (2) A deed or transfer shall be executed by all the owners and a release or discharge shall be given by all the persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description.

**Effect of registration of conveyance**

- (3) Upon the registration of the instruments mentioned in subsection (2)
  - (a) the government of the property or of the part of the common elements by this Act is terminated;
  - (b) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered; and
  - (c) claims against the property or the part of the common elements created after the registration of the declaration and description are extinguished.

**Proceeds**

- (4) Subject to subsection (5), the owners share the proceeds of the sale in the same proportions as their common interests.

**Rights of dissenters**

- (5) Where a sale is made under this section, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by arbitration under the *Arbitration Act* by serving notice to that effect on the corporation within ten days after the vote, and the owner who served the notice is entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined by the arbitration.

**Where proceeds inadequate**

- (6) Where the proceeds of the sale are inadequate to pay the amount determined under subsection (5) each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests. *1977, c.6, s.24.*

**25. Termination by notice without sale**

- (1) Termination of the government of the property by this Act may be authorized
  - (a) by a vote of owners who own eighty per cent, or such greater percentage as is specified in the declaration of the common elements; and
  - (b) by the consent of the persons having registered claims against the property created after the registration of the declaration and description.

**Registration of notice**

- (2) Where termination of the government of the property by this Act is authorized under subsection (1), the corporation shall register a notice of termination in the prescribed form, executed by all the owners and all the persons having registered claims against the property created after the registration of the declaration and description.



**Effect of registration**

- (3) Upon the registration of a notice of termination under subsection (2)
- (a) the government of the property by this Act is terminated;
  - (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
  - (c) claims against the land and the interests appurtenant to the land described in the description created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;
  - (d) incumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interest appurtenant to the land described in the description and have the same priority as they had before the registration of the notice of termination; and
  - (e) all other claims against the property created after the registration of the declaration and description are extinguished. *1977,c.6,s.25.*

**26. Termination by Supreme Court order**

- (1) A corporation, any owner, or any person having an incumbrance against a unit and common interest may apply to the Supreme Court for an order terminating the government of the property by this Act.

**Order**

- (2) The court may order that the government of the property by this Act be terminated if the court is of the opinion that the termination would be just and equitable, and, in determining whether the termination would be just and equitable, the court shall have regard to
- (a) the scheme and intent of this Act;
  - (b) the probability of unfairness to one or more owners if termination is not ordered; and
  - (c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.

**Ancillary matters**

- (3) Where an order of termination is made under subsection (2), the court may include in the order any provisions that the court considers appropriate in the circumstances. *1977,c.6,s.26.*

**ASSESSMENT AND TAXATION****27. Assessment and taxation**

- (1) In this section
- (a) “**assessing Act**” means the *Real Property Assessment Act* R.S.P.E.I. 1988, Cap. R-4 and any other Act pursuant to which an assessing authority is empowered to assess and levy rates, charges or taxes on land or in respect of the ownership of land;
  - (b) “**assessing authority**” means the Minister charged with the administration of the *Real Property Assessment Act*, any municipality as defined in the *Real Property Tax Act* R.S.P.E.I. 1988, Cap. R-5 or any other authority having power to assess and levy any rates, charges or taxes on land or in respect of the ownership of land.

**Copies of declaration and description to assessing authority**

- (2) A corporation shall, within twenty-eight days after the registration of a declaration and description or any amendment thereof, furnish to the assessing authority a certified copy thereof and for the purposes of any assessment or recovery of rates, charges or taxes in respect of any land which is the subject of a declaration and description
- (a) the particulars shown on the certified copy of the declaration and description are conclusive proof of those particulars; and
  - (b) the production by an assessing authority of what purports to be a certified copy of a declaration or description or any amendment thereof is *prima facie* proof that it is the certified copy furnished pursuant to this subsection.

**Assessment and taxation**

- (3) For the purpose of assessment and taxation by an assessing authority
- (a) each unit and common interest constitutes a separate parcel of land and improvements; and
  - (b) the common elements do not constitute a separate parcel of land or improvements, and the provisions of an assessing Act or any other Act authorizing or affecting
  - (c) the assessment or valuation of land and improvements by an assessing authority; or
  - (d) the imposition of rates, charges or taxes by an assessing authority in respect of land and improvements for municipal, school or other purposes authorized by statute; or
  - (e) the collection and recovery of rates, charges or taxes by an assessing authority by proceedings against an assessed owner and his property or the land and improvements against which the rates, charges or taxes are charged,
- apply with the necessary changes to each unit and common interest.

**Liability of corporation**

- (4) The corporation is not liable for any rate, charge or tax levied by an assessing authority. *1977,c.6,s.27.*

**VOTING BY MORTGAGEES**

**28. Rights of mortgagees**

Where a mortgage or charge of a unit and common interest contains a provision that authorizes the mortgagee or chargee to exercise the right of the owner to vote or to consent, the mortgagee or chargee may exercise the right, and, where two or more such mortgages or charges contain such a provision, the right may be exercised by the mortgagee or chargee who has priority. *1977,c.6,s.28.*

**PERFORMANCE OF DUTIES**

**29. Application for order to require performance of duties**

- (1) Where a duty imposed by this Act, the declaration or the bylaws is not performed, the corporation, any owner, or any person having an incumbrance against a unit and common interest may apply to the Supreme Court for an order directing the performance of the duty.



**Idem**

- (2) The court may by order direct performance of the duty, and may include in the order any provisions that the court considers appropriate in the circumstances.

**Application to lessees**

- (3) The lessee of a unit is subject to the duties imposed by this Act, the declaration and the bylaws, on an owner, except those duties respecting common expenses, and this section applies in the same manner as to an owner and where the lessee is in contravention of an order under this section, the court may terminate the lease.

**Saving**

- (4) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act. *1977, c.6, s.29.*

## SALE AND LEASE OF UNITS

**30. Implied covenants in agreements of purchase and sale**

- (1) Every agreement of purchase and sale entered into by a proposed declarant for the proposed unit for residential purposes shall be deemed to contain
- (a) a covenant by the vendor to take all reasonable steps to register a declaration and description in respect of the property in which the unit is included without delay;
  - (b) a covenant by the vendor to take all reasonable steps to sell the other residential units included in the property without delay other than any units mentioned in a statement under clause 33(1)(c); and
  - (c) a covenant by the vendor to take all reasonable steps to deliver to the purchaser a registrable deed or transfer of the unit without delay.

**Failure to register declaration within a specified period**

- (2) Notwithstanding any provision to the contrary contained therein, an agreement of purchase and sale of a proposed unit for residential purposes shall not be terminated by the proposed declarant only by reason of the failure to register the declaration and description within a period of time specified in the agreement, unless the purchaser consents to the termination in writing.

**Application to court**

- (3) Notwithstanding subsection (2) the proposed declarant may apply to a judge of the Supreme Court and the Judge may by order terminate the agreement if he is satisfied that
- (a) the proposed declarant has taken all reasonable steps to register a declaration and description;
  - (b) a declaration and description cannot be registered within a reasonable period of time; and
  - (c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the proposed declarant.

**Subsequent registration under Act**

- (4) The judge may, in an order under subsection (3) provide that a declaration and description shall not be registered in respect of the property in which the proposed unit is included during such period as he specifies in the order.

**Registration of order**

- (5) An order under subsection (3) is ineffective until a certified copy thereof is registered.

**Payments of purchase price**

- (6) Where an agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes permits or requires the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the money paid in respect of such right or obligation to the proposed declarant shall be credited as payments of the purchase price unless the agreement states that the money or any part of it will not be so credited. *1977, c. 6, s. 30.*

**31. Disclosure before sale**

- (1) An agreement of purchase and sale entered into by a declarant of a unit for residential purposes is not binding on the purchaser unless the declarant has previously delivered to the purchaser a copy of
- (a) the declaration;
  - (b) those parts of the description showing
    - (i) the perimeter of the horizontal surface of the land and the perimeter of the buildings,
    - (ii) the shape and dimensions of the unit, the boundaries of the unit by reference to the buildings and the approximate location of the unit in relation to the other units and the buildings, and
    - (iii) any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;
  - (c) a statement of the recreational or other amenities intended to be provided by the declarant for the enjoyment of the owners and of the conditions, if any, that apply to the provision of such amenities;
  - (d) any bylaws or any rules governing the use of common elements;
  - (e) any agreement for the management of the property or insurance trust agreement; and
  - (f) where the agreement for purchase and sale is entered into within the year immediately following the registration of the declaration and description, a budget statement prepared by the declarant for the year immediately following the registration of the declaration and description setting out the common expenses, the proposed amount of each expense, particulars of the service to be provided and the amount to be contributed by the purchaser for the year.

***Idem***

- (2) An agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes shall not be binding on the purchaser unless the proposed declarant has previously delivered to the purchaser a copy of
- (a) the proposed declaration;
  - (b) those parts of the proposed description showing
    - (i) the perimeter of the horizontal surface of the land and perimeter of the buildings,
    - (ii) the shape and dimensions of the unit, the boundaries of the unit by reference to the buildings and the approximate location of the units in relation to the other units and the buildings, and





- (iii) any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;
- (c) a statement of the recreational or other amenities intended to be provided by the declarant for the enjoyment of the owners and of the conditions, if any, that apply to the provision of such amenities;
- (d) any proposed bylaws or any proposed rules governing the use of common elements;
- (e) any agreement or proposed agreement for the management of the property or insurance trust agreement; and
- (f) a budget statement prepared by the proposed declarant for the year immediately following the registration of the declaration and description setting out the common expenses, the proposed amount of each expense, particulars of the service to be provided and the amount to be contributed by the purchaser for the year.

**Further disclosure before transfer of title**

- (3) Where an agreement of purchase and sale to which subsection (2) applies has been entered into, the proposed declarant shall at least ten days before delivering a deed or transfer for the unit to the purchaser, deliver to the purchaser a further copy of each document or instrument mentioned in subsection (1) or confirmation that the document or instrument is identical in all substantial or material respects to a corresponding document or instrument previously delivered to him under subsection (2).

**Inaccurate statement of common expenses**

- (4) Where the total amount incurred for the common expenses provided for in the statement mentioned in clause (1)(f) or (2)(f) exceeds the total of the proposed amounts set out in the statement, the declarant shall forthwith pay to the corporation the amount of the excess except in respect of increased expenses attributable to the termination of an agreement under section 19. *1977, c.6, s.31.*

**32. Trust money**

- (1) All money received by or on behalf of a proposed declarant from a purchaser on account of a sale or an agreement for the purchase and sale of a proposed unit for residential purposes before the registration of the declaration and description, other than money paid as rent or as an occupancy charge, shall be held in trust by the person receiving such money for the person entitled thereto in respect of the agreement and such money shall be held in a separate account designated as a trust account at a chartered bank or trust company or loan company authorized by law to receive money on deposit until
  - (a) its disposition to the person entitled thereto; or
  - (b) delivery of prescribed security to the purchaser for repayment.

**Interest**

- (2) Where an agreement of purchase and sale referred to in subsection (1) is terminated and the purchaser is entitled to the return of any money paid under the agreement the proposed declarant shall pay to the purchaser interest on such money at the prescribed rate.

**Idem**

- (3) Subject to subsection (2), where a purchaser of a proposed unit under an agreement of purchase and sale referred to in subsection (1) enters into possession or occupation of the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the proposed declarant shall pay interest at the prescribed rate on all money received by him on

account of the purchase price from the day the purchaser enters into possession or occupation until the day a deed or transfer acceptable for registration is delivered to him.

**Idem**

- (4) Subject to subsections (2) and (3), the proposed declarant is entitled to any interest earned on the money required to be held in trust under subsection (1). *1977,c.6,s.32.*

**33. Leases of units**

- (1) A declarant or proposed declarant shall not grant a lease of a unit or proposed unit for residential purposes unless
- (a) the lessee has entered into an agreement in good faith to purchase the unit;
  - (b) the lease grants to the lessee an option in good faith to purchase the unit;
  - (c) every agreement of purchase and sale of a unit included in the property includes a statement that the unit to be included in the lease is or will be leased and specifies the uses that are or will be permitted by the lease; or
  - (d) written notice of the lessor's intention to lease the unit has been given to every purchaser under an agreement of purchase and sale, registered owner and mortgagee and chargee entitled to vote, and the period referred to in subsection (2) has expired or, where an application is made under subsection (2), it is finally disposed of.

**Application to court**

- (2) Any person notified under clause (1)(d) may, within twenty-one days after receiving the notice, and on written notice to the declarant, apply to a judge of the Supreme Court, and the judge, if he is of the opinion that the declarant has not taken all reasonable steps to sell the unit, may by order prohibit the declarant from leasing the unit or grant such other relief as he considers proper.

**Contents of notice**

- (3) The notice mentioned in clause (1)(d) shall specify the unit or units intended to be leased and the uses that will be permitted by the lease but need not set out any other terms or identify any proposed lessee.

**Terms of leases**

- (4) A declarant or proposed declarant may grant leases of a unit or proposed unit for residential purposes for a period in each case not exceeding two years, including renewals, provided that subsection (1) is complied with in respect of each lease.

**Exemption**

- (5) This section does not apply to the renewal of a lease of a unit or proposed unit entered into before any agreement of purchase and sale of any unit or proposed unit included in the property is entered into.

**Lease, defined**

- (6) In this section, "lease" includes a license to use or occupy and any agreement in the nature of a lease. *1977,c.6,s.33.*



## LEASEHOLD CONDOMINIUMS

### 34. Registration of leasehold condominium

- (1) A person who is the lessee of land owned by and leased from the Crown or any agency of the Crown designated in the regulations for a term of not less than ninety-nine years may, with the consent of the Crown or the agency, register a declaration and description.

#### Registration by Crown

- (2) The Crown or agency may enter into a lease of land with itself for the purposes of this section, in which case the lease shall not merge in the fee by operation of law.

#### Application of Act

- (3) Upon the registration of a declaration and description under this section, the land and the interests appurtenant to the land described in the description are governed by this Act which, subject to subsection (6), applies with the necessary changes thereto.

#### Assignments of units

- (4) The lessee from the Crown or agency who registers a declaration and description under this section may assign or transfer the leasehold estate in respect of each unit designated in the description and for the purposes of this Act he shall be deemed to be the declarant and the assignee shall be deemed to be the owner of the unit.

#### Application of R.S.P.E.I. 1988, Cap. L-4

- (5) Part V of the *Landlord and Tenant Act* R.S.P.E.I. 1988, Cap. L-4 does not apply in respect of leases or assignments or transfers thereof that are subject to this section.

#### Regulations

- (6) The Lieutenant Governor in Council may make regulations
- (a) designating provisions of this Act that do not apply to properties in respect of which this section applies;
  - (b) making such modifications to the application of the provisions of this Act, other than this section, that apply to properties under this section as are considered necessary to adapt their application with the necessary changes to leasehold condominium projects;
  - (c) providing for such matters as are considered necessary for the purpose of effecting condominium projects in respect of leasehold land that are equivalent to those provided for by this Act in respect of freehold land;
  - (d) designating agencies of the Crown for the purpose of subsection (1). *1977,c.6,s.34.*

### 35. Offences

Every person who knowingly contravenes subsection 20(1) or (4), or subsection 32(1) or knowingly purports to enter into a lease in contravention of subsection 33(1) or (4), is guilty of an offence and on summary conviction is liable to a fine of

- (a) not more than \$25,000, where the person is a corporation; or
- (b) not more than \$2,000, where the person is other than a corporation. *1977,c.6,s.35.*

## REGULATIONS

### 36. Regulations

- (1) The Lieutenant Governor in Council may make regulations
- (a) classifying properties for the purposes of the regulations;
  - (b) prescribing the duties of officers appointed under the *Registry Act* for the purposes of this Act;
  - (c) governing the method of describing in instruments a property or any part of a property;
  - (d) governing surveys, structural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;
  - (e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of section 4, surveys of the properties showing the units and common elements;
  - (f) respecting the registration and recording of declarations, descriptions, bylaws, notices of termination and other instruments;
  - (f.1) creating a class of condominium to be known as a vacant land condominium that comprises vacant land units and common elements, prescribing requirements for the registration of a declaration and description for a vacant land condominium and regulating the operation of a vacant land condominium;
  - (g) respecting the names of corporations;
  - (h) respecting additions to the common elements;
  - (i) requiring the payment of fees to officers appointed under the *Registry Act*, and prescribing the amounts thereof;
  - (j) prescribing forms and providing for their use;
  - (k) governing funds intended for the payment of common expenses;
  - (l) requiring and governing the books, accounts and records that shall be kept by condominium corporations and requiring and governing the accounting to members of condominium corporations in such manner and at such times as are prescribed;
  - (m) exempting any class of person from this Act or the regulations or any provision thereof;
  - (n) prescribing security for the purposes of clause 32(1)(b);
  - (o) prescribing rates of interest that shall be paid on moneys required to be held in trust under this Act;
  - (p) respecting access to the property by candidates or other persons for the purpose of canvassing or distributing election material; and
  - (q) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

#### Application of regulations

- (2) Any provision of any regulation may be made to apply to all properties or to any class of properties. *1977, c.6, s.36; 1997, c.10, s.3.*

