

SEMINAR PAPER

THE REGISTRATION (STRATA TITLES) ACT AND PROPOSED AMENDMENTS TO THE ACT

PRESENTER:

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INTRODUCTION

I have been invited to talk to you today on the topic of The Registration (Strata Titles) Act and proposed amendments to the Act .

I propose to break down my presentation into four distinct areas.

FIRSTLY I will give you a brief history of the Act and for this purpose all references to the words "the Act" mean The Registration (Strata Titles) Act.

SECONDLY I intend to highlight the more important provisions of the Act and of the Regulations made thereunder and those with which developers and prospective purchasers of units in a strata development are likely to be confronted. In my effort to do this, I will try to illustrate what actually occurs from the early stages of a development to the stage where a purchaser owns and occupies the unit being acquired.

THIRDLY I will highlight some of the areas of this piece of legislation which undoubtedly is fraught with major deficiencies and problems **AND**

LASTLY I will address the various provisions of the Act which are the subject of consideration by Government for amendment.

HISTORY OF THE ACT

Our legislators, in drafting the Act which deals with land registration and matters of conveyancing, decided in their wisdom, to adopt the Torrens systems of registration used in Australia from as far back as over a century ago. This system of registration is, in my view, an excellent one and has worked very well for us in Jamaica. This is so despite certain problems with which the Office of Titles which administers such land registration and related matters, have been confronted. It is my own experience however, that within recent time, there has been marked improvement in the functions carried out by the Registrar of Titles and since there is no need for the strata plan to be sent to the Survey Department for pre-checking etc., strata titles are usually issued much more expeditiously than the conventional title.

Unfortunately however, not long after the passing of the Act it was discovered that it was fraught with deficiencies and problems. These have created serious implications for orderly development and also enormous headaches for developers, home owners, prospective purchasers, mortgagees and the like. The Bar Association, through its Conveyancing Committee, and other bodies such as the Jamaica Developers Association, have participated over the years in assisting the Government in resolving some of these problems. Despite promises made by Government to enact early legislation to amend the Act, to date the amendments have not been promulgated. I

will address later some of the problems referred to and the amendments proposed to deal with them.

The dynamic growth in Sydney, Australia, in the 1950's created many problems for that Government and arising out of the demand for increased domestic and professional accommodation in the city and its suburbs, that Government created legislation which gave recognition to the ownership of land in strata.

We in Jamaica found ourselves with problems which were similar in some respects to Australia, hence the passing of the Act which became effective on the 22nd day of August, 1969. The passing of the Act enabled Jamaicans who were desirous of owning a residential apartment or a floor or part thereof or an office complex, to obtain a title for such residential or commercial unit and to obtain any financing that such prospective owner may have required for the purpose of the acquisition.

The Act was intended to permit the utilization of limited land resources, especially in the Corporate area, and recognised the concept of multi-family housing accommodation as an ideal way of ensuring that available land was optimally utilized. Prior to the Act, this was not possible and various complex methods had to be devised to overcome the problem. One such method was to form a Company in which all unit holders were shareholders and in which the title to the land and building was vested. The holding of a particular group of shares entitled the holder to the exclusive use and occupation of a particular unit together with the right to use, in common with other holders, the general amenities. Another and more frequent method involved the formation of a company which would grant long-term leases to the unit holders and vesting of the title to the building to all unit holders as tenants in common, subject to an agreement between them defining their individual rights of occupation. These methods were in most part also fraught with problems.

HIGHLIGHTS OF THE ACT

(i) Strata Lot

The heading of the Act - "AN ACT to Facilitate the subdivision of land in strata and the disposition of titles, and for matters incidental thereto or connected therewith," is self-explanatory.

Before I highlight the more important provisions of the Act, I should tell you that nowhere in the Act do the words "condominium" or "condominium unit" appear, unlike legislation in other jurisdictions such as the USA. Instead, references throughout the Act is made to the words "strata lots" which in essence is one and the same term as a unit in a condominium development. In fact, in common parlance, the usage of the

words condominium and condominium development are quite common to describe a strata lot and a strata development.

What is a strata lot? The Act defines it as follows:

It "means a portion of the land comprised in a strata plan, and shown in that plan as a strata lot."

For a clearer understanding, perhaps the definition of a condominium would be helpful. A condominium is the common ownership of a piece of property by more than one individual, each of whom owns an absolute undivided interest in the property. It is an interest which has all the characteristics that we associate with fee simple ownership, such as alienability, mortgageability, devisability and inheritability. Breaking this down into a more ordinary language, it is a situation where two or more persons may each own a fraction of a piece of property not as tenants in common of the whole, but each one owning his own individual portion of the building, by himself.

The common boundary of any two strata lots or of a set of lots and common property is the centre of the floor, wall or ceiling between such strata lots or between such strata lots and common property as the case may be, unless otherwise specified in the relevant strata plan. (Section 7(3)).

(ii) **Common Property**

"Common property" means in relation to any strata plan, so much of the land to which such plan relates as is for the time being not included in any strata lot contained in any such plan. In essence, ownership in a strata development is ownership in common with others, of a parcel of land and certain portions of a building thereon which would normally be used by all the occupants, such as grounds, floors, walls, hallways, elevators and all other related common property, together with individual ownership in fee simple, of a particular unit or apartment in such building. As already stated, it is not confined to ownership of a residential unit such as an apartment. In fact, though residential strata developments are more common in Jamaica, there are in existence many commercial buildings which have been stratified. Ownership of the common property is therefore by the proprietors of the strata lots as tenants in common in proportion of their respective "unit entitlements" (which will hereafter be explained), but no share may be disposed of except as appurtenant to a lot (Section 10(3)). However, by unanimous resolution of the proprietors, the common property or any part of it may be transferred or leased by the corporation and easements and restrictive covenants may be accepted or granted by the corporation (Section 12(1)).

The common questions asked are - what is a "strata title" and how is it obtained? AND

- what is "strata corporation" and what is required to incorporate such an entity?

(iii) **Strata Title**

A strata title is a special title issued by the Registrar of Titles by virtue of The Registration of Titles Act and The Registration (Strata Titles) Act. Land under the operation of the former Act may be stratified into strata lots in accordance with a plan registered by the Registrar (Section 3).

I will now give you an outline of the steps and procedures to be adopted where a developer implements a strata development. Such developer will first employ the services of an Architect and Planner who will, among other things, investigate the zoning of the lands the subject of the proposed development. Provided the zoning and the restrictive covenants affecting the lands do not prohibit the development, the planner will submit the appropriate building and other plans to the relevant local authority so as to obtain approval for the development. The Regulations under the Act which became effective on the 25th day of August, 1969, make it clear that the provisions of the Local Improvement Act shall not apply to any strata subdivision effected pursuant to the Act. (Regulation 2). The net effect of this and of the process which I will shortly explain, is that one of the advantages to a developer in implementing a strata development versus a conventional type development involving the subdivision of lands and the erection of single-family dwellings or townhouses, is that a strata development may be implemented much more expeditiously resulting in substantial savings in finance and other charges which ultimately benefits the homeowner.

(iv) **Strata Plan**

The developer will thereafter proceed with construction of the building(s) immediately upon approval of the building plans from the local authority and as soon as the main structure, outbuildings (if any), and infrastructure are completed, he would employ a Commissioned Land Surveyor to prepare a site plan and strata plan. These plans will then be submitted to the local authority for endorsement of its approval. Such plans may be prepared prior to installation of fittings and fixtures but the roof and floors and both the external and internal walls dividing the units comprised in the development, must first be completed. The reason for this is that the Surveyor cannot otherwise clearly define the relevant boundaries of the respective units and/or common areas. It is absolutely necessary that the whole or part of the land comprised in the strata plan must be divided into two or more stratas, whether or not any strata is divided into two or more lots. (Sections 7(1)(b)).

The strata plan is required by the Act to contain several particulars, including what is in essence the site plan and the floor plan of the building. The plan must illustrate lots with distinguishing numbers and a clear definition of the boundaries of each strata lot in the building must be included - that is to say, each unit in the development must be defined by reference to its floors, walls and ceilings. The plan will also show the approximate floor area of each strata lot and more particularly it will have endorsed in a Schedule details of the unit entitlement of each stated lot. (Section 7 (1)).

(v) **Unit Entitlement**

The Schedule of unit entitlement is the basis for determining for the proprietor of each strata lot the quantum of his undivided share in the common property and the proportion of the overall cost that each purchaser shall pay to the strata corporation for operating the complex. (Section 7(4)). Such operational cost include the cost of insurance premiums, property taxes and general maintenance of the common areas such as the grounds, stairways, parking areas and elevators (if any).

The next step in the development is the submission of the approved plans to the Registrar of Titles for registration, by an Attorney-at-Law. Such application has to be accompanied by a prescribed certificate from the Surveyor, the duplicate Certificate of the Title for the lands being developed, and of course, the appropriate fees payable for the issue of the strata titles for the lots comprised in the development. (Section 7(2) & Regulation 6). Provided that the documentation is in order, it will be accepted by the Registrar of Titles for deposit who will thereupon allocate an appropriate number to the strata plan (Section 4(1)) and who will issue "splinter titles" for the strata lots comprised in the plan, in the name of the developer/applicant. (Regulations 7&8). The effect of registration of the plan will hereafter be explained.

(vi) **Implied easements**

Easements for subjacent and lateral support by the common property and every other lot, and easements of shelter by all parts of the building capable of providing shelter, are implied in favour of each lot. There are also implied in favour of the proprietor of each lot, easements for the passage or provision of services such as water supply, drainage, gas and electricity by means of pipes, wires, cables and ducts, and these easements are implied against every other proprietor through whose lot the services pass (Section 8).

(vii) **By-laws**

The purpose of the by-laws is to promote the smooth operation of the project, to induce harmonious living among the proprietors, to preserve the co-operative aspect of the property and its amenities and to enhance its value, desirability and attractiveness.

This is an area where dissention is likely to occur and if the by-laws are clearly and concisely laid down at the outset, there is not much room left for argument later on.

If it is not intended by the applicant to adopt the by-laws set forth in the Second Schedule to the Act, the applicant will have to submit with the application the set of rules and by-laws which will govern the control, management, administration, use and enjoyment of the strata lots and the common property contained in the strata plan. In essence, what the Act provides is that unless such amended or varied by-laws are deposited with the application, the by-laws set forth in the First and Second Schedule will regulate the corporation. (Section 9).

It is therefore very important that the applicant for strata titles carefully consider submitting rules and regulations for the protection of the development so as to ensure its continued integrity. The by-laws which are set out in the First Schedule cannot be amended or varied except by unanimous resolution of the proprietors but the by-laws set out in the Second Schedule may be amended or varied by the corporation, through its Committee. (Section 9).

Whilst on the subject of by-laws, I should point out that there is a particular provision in Section 9 (Sub-section 4) which is not contained in the Australian Act and which states that:-

“No by-laws shall operate to prohibit or restrict the devolution of strata lots or any transfer, lease, mortgage or other dealing therewith or to destroy or modify any easement implied or created by this Act.”

It should be appreciated that where there is community living there should be community control and the intention of the by-laws is also to ensure protection of the rights of the proprietors to peaceful enjoyment and occupation of their strata lots without disturbance and in such manner as will not depreciate the value of the individual units and the complex as a whole.

The developer may, (subject to certain restrictions imposed by The Real Estate (Dealers And Developers) Act), dispose of all or any of the lots comprised in the development prior to the issue of the splinter titles and may transfer lots to purchasers on completion of construction and on availability of titles. On completion of the transfer to the purchaser, he then becomes the registered proprietor and absolute owner of the lot and is empowered to deal with same without restrictions. The corporation must however be notified of any change in ownership.

(viii) **The Strata Corporation**

The proprietors of all the strata lots contained in the strata plan shall, upon

registration of the plan become a body corporate known as "the strata corporation" and thereafter will operate under the name - "The Proprietors, Strata Plan No....." Such number is allocated by the Registrar of Titles and the number of strata corporations presently in existence is 708. The corporation has perpetual succession; it also must have a common seal and is capable of suing and being sued. (Section 4).

(ix) **Duties and powers of the corporation**

The duties and powers of the corporation are very clearly defined in the Act (Section 5). I propose highlighting only the more important ones.

Insurance Coverage of Building

The one which will immediately strike our mind is the duty imposed on the corporation to insure the buildings in the complex against certain prescribed risks. This duty is quite onerous in that Section 5(1)(a) provides that unless the proprietors by unanimous resolution otherwise determine, the insurance coverage must be to the extent of the "replacement value" of the building. This section of the Act has clearly created some severe problems; increases over the years in peril insurance premium have exacerbated the problems. It should be noted that the Act makes no provision for public liability insurance. A duty is also imposed upon the corporation to properly repair and maintain the common property.

The Act also contains detailed provisions for the eventuality of total or partial destruction of "the building" and the application of insurance monies. (Section 14 & Regulations 24 & 25).

Establishment of Fund

The powers of the corporation include the establishment of a fund to cover administrative expenses and expenses for the normal day to day operation and maintenance of the common property, such as utility and janitorial services, insurance premiums, security, repair and replacement, professional and management fees (if any) and the creation and maintenance of a reasonable reserve for contingencies. The corporation determines from time to time the amounts to be raised for such fund, commonly called "maintenance charges." (Section 5(2)).

The total amount required to operate the complex should be estimated in advance by the corporation for each year, and the proprietors are required to pay monthly for their proportionate shares, the amounts of the assessments being based upon their respective percentage of ownership in the common property as set forth in the strata plan. Any overage or shortage should be adjusted by reduction or increase of assessments during the following year.

The corporation also has the right to recover maintenance charges from any defaulting proprietor, by Court action. (Section 5(3)). This section of the Act has proven to be a very weak area and like the insurance provision, has been a nightmare, not only for Management Committees and non-defaulting proprietors, but also for lending institutions such as Building Societies that provide such important services to the housing sector. The Act does not therefore give any teeth to ensuring the collection of outstanding maintenance charges, such as the creation of a lien or charge against the strata lot, as exist in other jurisdictions and the present process of collection is very time consuming, expensive and tedious.

Right of entry

The corporation also has the right to enter any strata lot to effect repairs or to comply with notices or orders by any competent public or local authority.

It should also be noted that proprietors who accept appointment on the Executive Committee of the corporation may be exposed to civil liability in the performance of their duties or lack thereof, particularly with regard to failure to insure the buildings in the manner prescribed by the Act, in the event of damage or destruction to such buildings by catastrophe.

(x) Constitution of the corporation

The constitution is clearly set out in the First and Second Schedules to the Act and provides inter alia, that the powers and duties of the corporation is subject to any restriction or direction given at a general meeting and shall be exercised by the executive committee consisting of not less than three nor more than nine proprietors elected at each annual general meeting. If however there are not more than three proprietors, the executive committee consists of all of them. The functions of the committee are very similar to those of the board of directors of a company and all matters at committee meetings are determined by a simple majority vote. A general meeting of proprietors must be held within three months after registration of the strata plan and thereafter at least once in every year at intervals not in excess of fifteen months. This provision of the Act, like many provisions of the Companies Act, is breached on a very regular basis with impunity, by many strata corporations. It is my view that the informal and improper manner in which many strata corporations operate, does not augur well for housing in Jamaica and is one of the reasons that some developers choose not to go the route of strata where there is an alternative type of development available.

An extraordinary general meeting of the corporation may be summoned on the requisition of a proprietor or proprietors entitled to twenty-five percent of the total unit entitlement.

(xi) **The Regulations**

The 1969 Regulations under the Act deal with matters such as the form and content of the strata plan, certain Titles Office administrative matters, certain prescribed forms and fees payable to the Registrar of Titles. It also contains a provision (Regulation 24(5)) whereby the proprietor may himself effect insurance coverage for his strata lot within certain limits if his lot is mortgaged or if the building is uninsured or is insured for less than its replacement value. The Regulations also enable the Court to settle a scheme for reinstatement for the adjustment of rights between strata lot owners, in a case where the building is damaged but is not totally destroyed. (Regulation 25).

(xii) **Other provisions worthy of note**

There are also other important provisions worthy of note:-

(a) one such provision empowers the proprietors by unanimous resolution to direct the corporation to transfer or lease common property or any part thereof (Section 11 (1)).

(b) Section 13 provides that the corporation or any proprietor or mortgagee may apply to the Court for the appointment of an administrator and the Court has a discretion to grant such an order if proper cause is established. The remuneration in respect of such administrator is fixed by the Court as administrative expenses within the meaning of the Act and forms part of the maintenance charges.

(c) Section 14 deals with destruction of the building shown in the strata plan and Regulation 25 deals with damage to the building.

(d) voting powers of a proprietor who is an infant or otherwise unable to control his property are covered by Section 15 of the Act and voting rights of mortgagees are covered by Regulation 23.

(xiii) **Property Taxes**

In 1986, the Act was amended so as to enable the Collector of Taxes, on his own initiative or consequent on agreement with a strata lot proprietor or the corporation, to separately assess the individual lot owner for property taxes, rather than the corporation, thus resulting in obvious advantages.

(xiv) Encroachments

It is a very common occurrence that there are encroachments on the common property created by proprietors who either are not aware of the exact location of their registered boundaries or flagrantly ignore it and extend the strata lot by constructing on a part of the common property, say a patio or a car-porte, a loft or garage or other structure. Since this constitutes a defect in title, it invariably results in delays or cancellation of sales and mortgages. The simplest method of rectifying the problem is of course to demolish that portion of the added structure which has created the encroachment. This is sometimes expensive and impractical and the granting of an easement by the corporation could resolve the matter. However, as already stated, it is necessary to first obtain the unanimous resolution of the proprietors to give the "direction" to the corporation to grant the easement. Section 12).

PROBLEMS AND DEFICIENCIES OF THE ACT

It is now an opportune time for me to deal with the last section of my presentation - namely, some of the problems which confront us as a result of deficiencies in the Act.

There are five instances where the unanimous resolution of all of the proprietors is required to enable the corporation to act. In cases of:

- (1) insurance coverage of the building(s) shown in the strata plan (S5(1)(a));
- (2) amendment of the by-laws set forth in the First Schedule to the Act (S9(2)(a));
- (3) transfer or lease of the common property or any part thereof (S11(1));
- (4) a grant of easement or a restrictive covenant from or to the corporation (S12(1));
- (5) the requirement of a resolution that "the building" is destroyed (S14(2)(a)).

In addition to the likelihood of the existence of even one dissenting proprietor from a meeting called for the purpose of passing any of the abovementioned resolutions, the absence of any one proprietor from such meeting will result in the failure of passing of such resolution.

In addition, it is a well known fact, well publicised, and my own experience has been that a large number of strata corporations are faced with defaulting proprietors

who persistently fail to fulfil their obligations to their fellow proprietors by paying their proportionate share of the overall maintenance costs. The result of this is that:-

1. Such default usually leads to general neglect of the condominium complex and to substantial arrears in taxes and utility bills. It may also lead to possible serious implications, in the event of total or partial loss due to fire, earthquake or hurricane, where there is in existence inadequate insurance coverage of the building or no coverage at all.
2. Lending institutions are justifiably reluctant to finance units comprised in developments confronted with defaulting proprietors and in cases where there are in existence outstanding arrears of property taxes, water rates or insurance premiums.
3. For the same reason, the attitude of prospective purchasers of a unit where this problem exists, would be no different to that of a mortgagee. The effect therefore is that the marketability of such a unit becomes questionable and the value of the unit could be adversely affected.
4. The ultimate result of all this is that the entire complex invariably becomes run down since the corporation cannot fulfil its statutory obligation of maintaining the property.

There are in the corporate area untenable situations like this with many condominiums which clearly demonstrate and in fact, enforces the need for amending legislation. It is most unfortunate that successive Governments, including the present one, has neglected this whole matter and has failed to deal with it with the urgency which it deserves.

AMENDMENTS PROPOSED BY GOVERNMENT

The final segment of this presentation deals with the amendments proposed by the Government which are intended at updating the deficient provisions of the Act, to which I have already referred. The Government has been considering amendments to the Act since 1987 and the process has been through many stages, commencing with the appointment of a Committee in 1989 which was given the task of reviewing a draft for submission to Cabinet. A Ministry Paper was tabled in 1991 and there were wide ranging responses from the public. The document was again reviewed and more recommendations were made. After several re-drafts a final submission was made to Cabinet in 1994. The Government consulted with various organisations including this Association, the Jamaica Developers Association and the Jamaica Association of

Strata Corporation. On the 27th day of November, 1996 a forum was held by the Honourable Easton Douglas at which he made a presentation and an open discussion ensued with regard to further amendments contained in a paper presented at the forum.

It should be understood therefore that the amendments which are set out hereunder are not necessarily final as this matter has not yet been finally considered by Cabinet.

(a) **Means of enforcement for the non-payment of maintenance fees by proprietors**

As already indicated Sections 5(2)(c) and 5(3) deal with the matter of collection by Court action which, needless to say, has proven to be a tedious and drawn out process. This is perhaps the most contentious issue affecting strata properties. I have already alluded to some of the resulting serious implications but should emphasise that when, for example, insurance premiums are not paid due to defaulting proprietors, the entire complex is at great risk.

It is proposed to amend the Act to provide that where maintenance fees are owing by a proprietor for a period exceeding thirty days -

- (i) the corporation may lodge a caveat against the title of a proprietor for non-payment and;
- (ii) a Statutory charge will be created whereby the corporation would enjoy the same rights as a registered mortgagee including powers of sale. By this mechanism the arrears due to the corporation would constitute a charge against the strata lot.

There are some other detail provisions proposed such as the right of a proprietor to challenge the amount of fees that is alleged to be outstanding and the right of appeal to a Judge in Chambers. There is also provision for interest to be charged on arrears.

It should be noted that individual responsibility of each proprietor for property taxes would minimise the difficulty of collection of maintenance charges as such charges could be reduced and kept to a bare minimum. In the same way, if the unit of each proprietor could be metred by the National Water Commission charges would be reduced as such charges would only be impacted by water supplied to the common area. Both situations are possible in light of the 1986 amendment to the Act previously referred to with regard to taxes and separate water metres can in fact be installed for individual units. It would of course be more appropriate and advantageous for the developer of the project to make separate property tax ingivings and to effect water installation in this manner simultaneously with completion of the project.

(b) Requirements for unanimous resolution

The five Sections of the Act which provide for unanimous resolution have already been stated. "Unanimous resolution" is defined in Section 2 as a resolution unanimously passed at a duly convened meeting of the corporation at which all persons entitled to exercise the power of voting conferred by or under this Act are present personally or by proxy at the time of the motion."

Each proprietor of a strata lot is automatically a member of the corporation (Section 4). It is not uncommon for a proprietor to reside overseas and of course, it is also not uncommon for a member to be unreasonable when voting on a resolution. Experience has shown that the attendance personally or by proxy of all members at meetings of the corporation is almost never achieved and the corporation is left incapable of acting upon any matter requiring "unanimous resolution."

The proposal is that the requirements for unanimous resolutions should be removed from the Act and provisions be made for decisions to be arrived at in the following manner:

- (i) Except for decisions required in respect of insurance (Section 5(1)(c)), a resolution should be regarded as passed if at a duly convened meeting of the corporation, all those persons entitled to exercise the powers of voting conferred by the Act **who are present** either personally or by proxy, vote in favour of the resolution, **and** those other persons who did not attend the meeting subsequent agree to it in writing. These latter persons are to be served with a notice of the resolution and would be required to signify their agreement, either personally or by proxy, within twenty-eight days of the date of the meeting. If no response is received after this period, a second notice will be served giving an additional twenty-eight days for a response. The resolution will be regarded as carried if no response is received after the expiration of the second notice.
- (ii) Decisions relating to insurance should be by a special resolution which for this purpose is a resolution passed at a duly convened meeting, for which at least twenty-eight days notice has been given, by all proprietors attending and voting or voting by proxy, providing that those voting in favour of the resolution represent not less than a majority of the proprietors eligible to vote (the exact percentage majority is unknown but is likely to be two thirds). There are detailed proposals with regard to the format etc. of the notice.

(c) **Scope of insurance required**

Section 5(1)(a) requires that the corporation insure and keep insured the building to the replacement value thereof against fire, earthquake, hurricane and such other risks as may be prescribed. The proposals for amendment are as follows:

- (i) the reference to replacement value is to be removed from the Act and it should make provision for minimum risks only, (the extent of such risks is unknown at this time) leaving the proprietors to decide whether coverage against other risks is desired.
- (ii) for the corporation to effect insurance coverage for public liability;
- (iii) in cases where the corporation defaults in payment, thereby causing the policy to lapse or cancelled, the corporation will be required to publish a notice to this effect in the printed media so as to make owners and mortgagees aware of what is happening;
- (iv) for the corporation to have the responsibility of notifying the insurance company of all changes in ownership so that unit owners are aware of contemplated cancellations.

(d) **Mandatory supply of information to Mortgagees**

Section 5(4) does not allow a Mortgagee "certification" concerning certain important information such as amounts due and owing by the proprietor. Amendment of the Section is proposed to include the mortgagee as being a party entitled to such information.

(e) **Notification of change of ownership or change in mortgage registration of strata lots**

Clause 1(f) of the First Schedule requires each proprietor to "notify the corporation forthwith upon any change of ownership or of any mortgage or other dealing in connection with his strata lot." This requirement is very rarely complied with by proprietors and the corporation is left in the position of not knowing precisely who its members are and what third party interests may be held in the property of its members and itself. It is proposed that the Act be amended to place the onus on both the Transferor and Transferee to advise of changes in ownership or mortgage registration and the relevant details of same and also to impose a penalty in the event of breach.

(f) **Regulatory mechanisms for strata properties**

There is at present no machinery to monitor the performance of strata corporations. The establishment of strata complexes imposes special obligations on both the owners of the strata lots and the corporation. In several strata properties the duties of both are not being complied with due to the ineffectiveness of the management committee. The functions of the corporation include, inter alia, the proper keeping of accounts and records and holding of regular meetings.

It is clear that there is need for some body to perform this important role of monitoring, as one main consideration is that if management committees were functioning properly some of the problems associated with strata schemes would be eliminated, such as collection of maintenance fees and the keeping of proper books and accounts. It is proposed that provision be made in the Act for a "Commissioner of Strata Titles" who would act based on an application by either the corporation or the proprietor, with extensive duties, such as making orders for, inter alia, the following:

- (i) the settlement of disputes by Arbitration or otherwise, rectifying complaints, effecting alterations and repairs to the common property;
- (ii) the variation of contributions and payments where these are inadequate, excessive, or the manner of payment unreasonable;
- (iii) the variation of the amount for which the building is insured, if this amount is unreasonable;
- (iv) the appointment of persons to convene and hold annual general meetings or to elect a council of the strata corporation.

It is proposed to amend the Real Estate (Dealers And Developers) Act to allow the Real Estate Board to carry out the duties of Commissioner .

(g) **Compulsory registration of strata corporation**

It is proposed that compulsory registration of strata corporations with the Commissioner of Strata Titles be obligatory, subject to the payment of a fee. The initial registration is to be effected by the developer.

(h) **Reserve fund**

It is proposed that the Act provides for the establishment of a reserve fund and that this be added to the duties of the corporation (Section 5). The fund would be the

property of the corporation and is intended to be used to meet expenses other than those of a routine nature, for example, emergency repairs to major equipment and painting of buildings.

(i) **Indemnity of Executive Committee**

Provision is to be made whereby proprietors who serve on the committee should be indemnified from any civil liability involving the corporation, arising from the office held.

Let us therefore hope that Government will take the action necessary to enact the appropriate amending legislation, without further delay. Such legislation will certainly encourage more condominium type developments and will in my view, go a far way in alleviating the existing problem of land-shortage in the corporate area, generating cheaper housing accommodation and will also reduce the existence of unsightly residential strata developments in and outside of the Corporate Area.

I trust that this paper has given you a better feel and understanding of the Act and what a strata corporation is all about.



TREVOR E. DeLEON

Date: April 20, 1998