

JAMAICA

No. 17-2009

I assent,

[L.S.]

(sgd.) P. L. Allen
Governor-General

29th December, 2009

AN ACT to Amend the Registration (Strata Titles) Act.

[30th December, 2009]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Registration (Strata Titles) (Amendment) Act, 2009, and shall be read and construed as one with the Registration (Strata Titles) Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

Amendment
of section 2
of principal
Act.

2. Section 2 of the principal Act is amended by inserting the following definitions in the appropriate alphabetical sequence—

“agent” means a person appointed in accordance with paragraph 1(g) of the First Schedule;

“Commission” means the Commission of Strata Corporations established by section 3A;

“developer” means a person who carries on, whether in whole or in part, the business of development of land;

“functions” includes powers and duties;

“Register” means the Register of Strata Corporations kept pursuant to section 4B;

“Tribunal” means the Strata Appeals Tribunal established by section 15A;”.

Insertion of
new sections
3A, 3B, 3C,
3D, 3E and
3F in princi-
pal Act.

3. The principal Act is amended by inserting next after section 3, the following as sections 3A, 3B, 3C, 3D, 3E and 3F—

“Establish-
ment of
Commission
of Strata
Corpora-
tions. 3A.—(1) There is hereby established for the purposes of this Act, a body to be known as the Commission of Strata Corporations which shall be a body corporate for the purposes of section 28 of the Interpretation Act.

Third
Schedule. (2) The provisions of the Third Schedule shall have effect as to the constitution of the Commission.

Functions of
Commission. 3B.—(1) The functions of the Commission shall be to—

- (a) monitor, regulate and supervise corporations incorporated by section 4;
- (b) keep or cause to be kept a register of such corporations to be known as “The Register of Strata Corporations”;
- (c) facilitate the resolution of disputes, in particular, those between a corporation and a proprietor arising from any matter to which this Act relates;

- (d) consider complaints from proprietors that the amount of contribution levied under section 5(2)(b), is unreasonable or inequitable;
- (e) enforce the by-laws; and
- (f) perform such other functions as may be conferred upon it by or under this Act, or as the Minister may by order prescribe.

(2) In exercise of its functions, the Commission may—

- (a) order, by notice in writing to an executive committee or a proprietor or both—
 - (i) the demolition of any extension to the external wall of any strata lot or the removal from the relevant parcel of any structures, vehicles or other things, where the extension or the presence of the structure, vehicle or other thing is contrary to the by-laws;
 - (ii) where it considers appropriate, that the interest payable by a proprietor in respect of the late payment of contribution be varied to the amount stated in the notice;
 - (iii) the removal of animals from any strata lot or common property;
 - (iv) that contributions be varied where they appear to the Commission to be excessive or inadequate;

- (v) that the manner of making any payment be varied where it appears to the Commission to be unreasonable;
 - (b) order, by notice in writing to a corporation—
 - (i) that a resolution passed by the corporation shall be of no effect where the voting rights of a proprietor have been compromised;
 - (ii) the holding of an annual general meeting for the election of an executive committee, within the period stated therein and the notification to the Commission, within fourteen days of the annual general meeting, of the names of the members of that executive committee; and
 - (c) make such enquiries and collect such information as it may consider necessary or desirable for the purpose of monitoring, regulating and supervising the functions of corporations.
 - (d) do anything and enter into any transaction which in the opinion of the Commission is necessary for or incidental to ensure the proper performance of its functions.
- (3) Where a proprietor fails to comply with an order under subsection (2)(a)(i), the corporation may—
- (a) demolish the unauthorized extension;
 - (b) restore the strata lot or common property, as the case may be, to its original state; and

- (c) recover the expenses incurred by the corporation in such demolition or restoration,

and any such expenses which remain unpaid shall, in addition to any other remedy, be a first charge on the strata lot concerned.

(4) Where the corporation fails to comply with an order under subsection (2) (b) (ii), the Commission shall convene the annual general meeting for the purpose of the election of the executive committee and any decisions thereof shall be binding on the corporation and be effective as if made at a meeting called by the corporation.

(5) The corporation, a proprietor or any other person aggrieved by a decision of the Commission may appeal against the decision, so, however, that, the decision of the Commission shall, subject to subsection (7), be binding on the corporation, proprietor or any other person aggrieved, as the case may be, until the appeal is determined.

(6) An appeal pursuant to this section shall be made no later than thirty days from the date of the decision of the Commission.

(7) Subject to subsection (8), the implementation of a decision that is the subject of an appeal shall be suspended until the time for appeal has expired or the appeal has been disposed of.

(8) Notwithstanding subsection (7), a decision of the Commission shall be implemented forthwith where continuation of the action or thing complained of, to which the decision relates, is likely to result in a nuisance or health hazard.

Power of
Minister to
give
directions.

3C. The Minister may, after consultation with the Chairman of the Commission, give to the Commission directions of a general character as to

the policy to be followed by the Commission in the exercise and performance of its functions and the Commission shall give effect to such directions.

Funds and
resources of
the Commis-
sion.

3D. The funds and resources of the Commission shall consist of—

- (a) such sums as may be provided by Parliament for the Commission in the Estimates of Revenue and Expenditure of Jamaica;
- (b) revenue from charges imposed by the Commission for the use of any facility or services provided by it;
- (c) such sums as may be allocated from time to time to the Commission from loan funds;
- (d) sums borrowed by the Commission for the purpose of meeting any of its obligations or discharging any of its functions;
- (e) all other sums or property which become payable to or vested in the Commission in respect of any matter incidental to its functions.

Accounts and
audits.

3E.—(1) The Commission shall keep proper accounts and other records in relation to the business of the Commission and shall prepare annually a statement of accounts in accordance with generally accepted accounting principles.

(2) The accounts of the Commission shall be audited by an auditor or auditors appointed annually by the Commission.

(3) Within six months after the end of each financial year or within such further time as may in special circumstances be allowed by the Minister, the Commission shall send, in respect of that financial

year, a statement of its accounts referred to in subsection (1) to the Minister, together with a copy of any report made by the auditors on that statement or on the accounts of the Commission.

(4) The auditor's fees and any expenses of the audit shall be paid by the Commission.

(5) The Auditor-General shall be entitled on the direction of the Minister, at all reasonable times to examine the accounts and other records in relation to the business of the Commission.

Annual
report.

3F.—(1) The Commission shall, within six months after the end of each financial year or within such further time as may be allowed by the Minister, cause to be made and transmitted to the Minister a report dealing generally with the affairs of the Commission during that financial year.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditor's report thereon to be tabled in the House of Representatives and the Senate.”

4. Section 4 of the principal Act is amended by inserting next after subsection (3) the following as subsections (4), (5), (6), (7) and (8)—

Amendment
of section 4
of principal
Act.

“ (4) The corporation shall within ninety days after becoming a body corporate make an application to the Commission for registration under this Act and pay the prescribed fee.

(5) A corporation shall in each year pay to the Commission a prescribed annual fee and in default of such payment, such fee shall be recoverable by the corporation as a civil debt by action in a court of competent jurisdiction.

(6) Where the corporation fails to comply with subsection (4), it commits an offence, and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred and fifty thousand dollars.

(7) The corporation shall file with the Commission within one hundred and twenty days after the end of the current year—

(a) audited financial statements or subject to the approval of the Commission, a copy of the accounts, prepared in accordance with generally accepted accounting principles, signed by the chairman and at least one other member of the executive committee relating to—

(i) in the case of a new corporation, the period commencing on the date of its incorporation and ending at the close of the first financial year; or

(ii) in any other case, the whole of that financial year; and

(b) a report of its activities during the financial year including—

(i) meetings held by the corporation;

(ii) the appointment of the executive committee;

(iii) the passing of resolutions adopting a budget; and

(c) a copy of the certificate of insurance for the current year,

and the filing shall be accompanied by the prescribed fee.

(8) The prescription of any fee under this section shall be subject to affirmative resolution of the House of Representatives.”.

5. The principal Act is amended by inserting next after section 4, the following as sections 4A, 4B and 4C—

Insertion of
new sections
4A, 4B and
4C in
principal Act.

4A.—(1) Fees collected by the Commission shall be used to assist in meeting its administrative expenses.

“Application
of fees by
Commission.

(2) Where—

(a) the average income of the proprietors that constitute the corporation is less than such

amount as the Minister may, by order, prescribe; and

- (b) the Commission is satisfied that it is reasonable to waive or reduce the fee payable by the corporation, having regard to the financial circumstances of the corporation,

the Commission may waive or reduce the required registration fee.

(3) For the purposes of subsection (2)(a) average income shall be determined by using such measures as the Commission considers reasonably practicable in the circumstances of the particular case.

Register of
Strata
Corporations.

4B.—(1) The Commission shall keep the Register of Strata Corporations in such form as the Commission may determine, which shall contain the names and other particulars of all corporations and the members of the respective executive committees, in relation thereto, and any other particulars relevant to the corporations or the strata lots administered thereby.

(2) The Register shall be kept at the office of the Commission and shall be available for inspection at all reasonable times on payment of the prescribed fee.

Audit of
corporation
by Commis-
sion.

4C.—(1) The Commission shall—

- (a) carry out an audit of the accounts and other records; and
- (b) conduct an investigation into the activities,

of a corporation, in any case where it considers that the circumstances so require.

(2) The expenses incurred by the Commission under subsection (1), shall be recoverable from the

corporation as a debt by action in a Court of competent jurisdiction.”.

Amendment
of section 5
of principal
Act.

6. Section 5 of the principal Act is amended—

(a) in subsection (1) by—

- (i) deleting the full stop at the end of paragraph (h) and substituting therefor a semicolon;
- (ii) inserting next after paragraph (h) the following as paragraph (i)—

“(i) in any case where the corporation defaults in payment of any premium on any policy of insurance which consequently lapses or is cancelled—

- (i) to inform any proprietors or any agents of the proprietors of such lapse or cancellation by notice in writing within fourteen days thereof; and
- (ii) to display a copy of the notice in a conspicuous manner within the common property.”;

(b) in subsection (2) by—

- (i) deleting the full stop from paragraph (d) and substituting therefor a semicolon;
- (ii) inserting next after paragraph (d) the following as paragraph (e)—

“(e) to exercise a power of sale in respect of a strata lot in accordance with the provisions of this Act.”;

(c) in subsection (4), by inserting immediately after the words “on the application of” the words “a mortgagee or”;

- (d) by inserting next after subsection (5) the following as subsection (6)—

“ (6) An implied covenant shall exist between the corporation and each proprietor binding the latter, his heirs, executors, administrators and transferees, to pay contributions or other monies due and owing to the corporation in respect of the relevant strata lot prior to the transfer of the strata lot.”.

7. The principal Act is amended by inserting next after section 5, the following as sections 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H and 5I—

Insertion of new sections 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H and 5I in the principal Act.

“Failure to pay contribution.

5A.—(1) Where for a period exceeding thirty days, a proprietor fails, neglects or refuses to pay to the corporation, all or any part of the contribution levied pursuant to section 5(2)(b), the corporation shall act in the manner specified in subsection (2).

(2) For the purposes of subsection (1), the corporation shall notify in writing the proprietor concerned and his agent, if any, and the mortgagee of the strata lot, if any—

- (a) of the outstanding amount of the contribution owing by the proprietor and the period for which the contribution is owed, outlined in a related statement of accounts;
- (b) of the amount of interest accruing on the contribution and the period for which interest is payable, outlined in a related statement of accounts;
- (c) that the proprietor is required, within thirty days from the date of the service of the notice, to pay the outstanding contribution and the amount of interest, if any, accruing thereon;
- (d) that if the outstanding contribution and interest accrued thereon are not paid

within the period specified under paragraph (c) or make suitable arrangements to pay that amount, the corporation may sell the strata lot by public auction or by private treaty in accordance with section 5C(4);

- (e) that the proprietor, if aggrieved by the amount of contribution stated in the notice, may lodge an appeal if he has paid at least fifty percent of the amount owing or such other amount as may be agreed with the corporation.

(3) Where the mortgagee sells the property, the amount of contributions owing shall be deducted from the proceeds of sale, and the mortgagee shall be responsible for remitting that amount, to the corporation.

(4) Where a proprietor appeals against the amount of contribution, the corporation shall not exercise its power under subsection (2)(d) until the appeal is determined.

(5) Where in any appeal under this section the Tribunal is satisfied that contributions owing to a corporation are due and have been owing for at least sixty days prior to the appeal being lodged, the Tribunal may make an order for such payment.

(6) Where on appeal the Tribunal determines that the amount paid by the proprietor pursuant to subsection (2)(c) ought not to have been paid, the Tribunal may order—

- (a) that the corporation refund the amount to the proprietor; or
- (b) if there is any other amount outstanding with respect to that proprietor, that the

corporation use the amount to offset the amount outstanding.

Unpaid contributions shall be charge on strata lot.

5B.—(1) The contributions imposed pursuant to section 5(2)(b), shall be a charge on each strata lot contained in a strata plan and shall run with the strata lot.

(2) The contributions referred to under subsection (1), shall rank in priority to existing mortgages or charges on the strata lot.

Procedure to be satisfied prior to exercise of power of sale.

5C.—(1) Prior to the exercise of the power of sale by the corporation, the corporation shall satisfy the Commission that the corporation has taken all reasonable measures to recover the amounts owing by giving notice to the proprietor and his agents, if any, and the mortgagee of the strata lot, if any, in accordance with the notice referred to in section 5A(2).

(2) Where the Commission is satisfied that the corporation has exhausted all means of notifying the proprietor in accordance with section 5A, it may direct the corporation to take any additional action it deems fit in the circumstances, including the publication of a notice of the proposed sale of the strata lot.

(3) A notice referred to in subsection (2) shall—

(a) be published within thirty days after the Commission has given the direction in relation thereto, in a daily newspaper, printed and circulating in Jamaica; and

(b) shall contain—

(i) a brief description of the land including the area of the unit;

- (ii) the number of rooms;
- (iii) the strata lot and strata plan numbers;
- (iv) the relevant Volume and Folio numbers of the Register Book of Titles;
- (v) the civic address and name of the complex, if any; and
- (vi) the land use.

(4) Where the Commission is satisfied that the corporation has taken all reasonable steps in accordance with section 5A(2) for the purpose of—

- (a) obtaining payment of amounts owing to the corporation; and
- (b) notifying the proprietor of the proposed sale,

it shall issue a certificate in the prescribed form to that effect.

(5) The corporation may only exercise a power of sale where it has received from the Commission a certificate under subsection (4).

Prior valuation and advertisement of strata lot to be sold.

5D.—(1) Where a strata lot is to be sold by the corporation in exercise of a power of sale, the corporation shall ensure as far as is reasonably practicable that the strata lot is sold at the best price reasonably obtainable.

(2) The strata lot to which this section relates shall be valued by the corporation in accordance with subsection (3) and within twenty-one days of the valuation, the corporation shall give notice of the valuation determined to the proprietor in accordance with section 5F(1) prior to the exercise of its power of sale, and to the mortgagee of the strata lot, if any,

at the address for the mortgagee appearing in the Register Book of Titles.

(3) The corporation shall ensure that two separate valuations of the strata lot are obtained, each to be determined by a duly qualified person appointed by the corporation with the approval of the registered mortgagee, if any.

(4) Upon receipt by the corporation of a certificate under section 5C(4), and in any event not less than thirty days prior to the sale of the strata lot, the corporation shall advertise the proposed sale at least once in a daily newspaper circulating in Jamaica.

(5) The corporation shall treat the proceeds of sale of the strata lot sold pursuant to this section, as if it were monies received by a mortgagee arising from a sale.

(6) Where having been valued under this section, and the strata lot is sold, the corporation shall within twenty-one days of the sale, give notification thereof to the proprietor in accordance with section 5F(1) and to the mortgagee of the strata lot if any, at the address of the mortgagee appearing in the Register Book of Titles.

Application
of proceeds
of sale.

5E.—(1) Where a corporation has exercised its power of sale under section 5(2), any money received in respect of the sale shall be apportioned in the following order—

- (a) firstly to pay any costs associated with and incidental to the sale of the strata lot; then
- (b) to pay all amounts owing to the corporation; and then
- (c) in the absence of a mortgage on the strata lot, to pay the balance to the proprietor.

(2) The corporation shall forthwith upon the exercise of the power of sale, furnish a statement of accounts of the sale, to the proprietor and mortgagee, if any.

(3) Where there is a mortgage on the strata lot, the mortgagee shall be paid the amount owed upon the mortgage, and the balance, if any, shall be given to the proprietor.

(4) In the event that a proprietor cannot be located subsequent to the exercise of a power of sale, the money received in respect of the property shall be deposited in an interest bearing account in a bank or other financial institution licensed to accept deposits, in the name of the Corporation, in trust for the proprietor.

(5) For the purposes of executing its powers of sale under section 5(2), the corporation shall be entitled to execute all relevant instruments and documents necessary, pursuant to the Registration of Titles Act, to transfer ownership of the strata lot.

(6) Subject to subsection (8), the corporation shall not be liable to the proprietor for any loss occasioned by the sale of the strata lot in accordance with section 5(2) and a purchaser is not bound to see or enquire as to—

- (a) whether there has been a default in payment of contribution;
- (b) whether notice has been served or otherwise; or
- (c) the propriety or regularity of such sale.

(7) The Registrar of Titles upon the production of a transfer made in professed exercise of the power

of sale, shall not be concerned or required to make any enquiry in relation to the exercise of the power of sale.

(8) Any person wronged by an unauthorized or improper or irregular exercise of the power exercised in accordance with subsection 5(2) shall have his remedy in damages only, against the corporation exercising the power.

Service of documents.

5F. A notice issued by the corporation shall be in writing and served by—

- (a) giving such notice to the proprietor and his agent; or
- (b) leaving it on some conspicuous part of the strata lot; or
- (c) sending it to the proprietor of the strata lot and his agent if any, through the post office by registered letter directed to them at the address provided by the proprietor or the address appearing in the Register Book of Titles for such proprietor;

Application for order for possession.

5G—(1) Notwithstanding the other provisions of this Act, the corporation may submit an application to the court for an order for possession of the strata lot where—

- (a) for a period exceeding sixty days, contributions have not been paid in respect of that strata lot;
- (b) all efforts to locate the proprietor of the strata lot have been unsuccessful; and
- (c) the corporation intends to rent the strata lot to recover the amount outstanding as

contributions to the corporation until the proprietor or his agent—

- (i) is found; and
- (ii) *h*as paid all the amount outstanding and has resumed his obligations with respect to the contributions.

(2) The corporation shall apply to the court to obtain vacant possession of the strata lot where the corporation intends to exercise its power of sale.

(3) Where possession of a strata lot that is rented is granted to the corporation, the court may direct that contributions be deducted from the rent and paid over to the corporation by the tenant.

Proceeds of rental to be kept in interest bearing account.

5H. Proceeds of rental which remain after the deduction of contributions levied pursuant to section 5(2) and other related expenses in respect of a strata lot that is, by an order of the court, in the possession of the corporation, shall be kept in an interest bearing account, in the name of the corporation, in trust for the proprietor in a bank or other financial institution licenced to accept deposits.

Determination regarding administration of strata lot.

5I. The court may, in relation to an application submitted by the corporation under section 5G, make a determination as to the best interest of the parties concerned with regard to the administration of the strata lot concerned.”.

Amendment of section 9 of principal Act.

8. Section 9 of the principal Act is amended by—

- (a) deleting from subsection 2(a) the words “unanimous resolution” and substituting therefor the words “a resolution passed by at least seventy-five percent of the proprietors;

- (b) renumbering subsection (7) as subsection (8) and inserting the following as subsection (7)—

“ (7) Each proprietor shall give to a person in lawful possession of the proprietor’s strata lot, a copy of the by-laws in force for the time being and any notifications lodged with the Registrar of Titles pursuant to subsection (5) .”;

- (c) inserting next after subsection (8) as renumbered, the following—

“ (9) A mortgagee or chargee (as the case may be) in possession of a strata lot shall be bound, to the same extent as the proprietor, by the by-laws referred to in this section.

(10) Each corporation shall, upon the request of the Commission, lodge with the Commission—

- (a) a copy of the by-laws in force for the time being and any notifications lodged with the Registrar of Titles pursuant to subsection (5); and
- (b) an address for service for each proprietor of a strata lot.”.

9. The principal Act is amended by inserting next after section 9, the following as section 9A—

Insertion of new section 9A in principal Act.

“No action lies against a proprietor for *bona fide* acts. 9A. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any proprietor who is a member of the executive committee in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.”.

10. Section 13 of the principal Act is amended in subsection (1), by deleting the words “The corporation” and substituting therefor the words “The Commission, the corporation”.

Amendment of section 13 of principal Act.

Amendment
of section 15
of principal
Act.

11. Section 15 of the principal Act is amended by renumbering subsection (3) as subsection (4) and inserting the following as subsection (3)—

“ (3) Where the corporation is satisfied that a proprietor is able to vote but fails, after being served with due notice, to—

- (a) attend meetings; or
- (b) appoint a proxy,

the corporation may apply to the Commission for an order appointing a proxy to vote on resolutions requiring a unanimous vote.”.

Insertion of
new section
15A in
principal Act.

12. The principal Act is amended by inserting next after section 15, the following as section 15A—

“ Establish-
ment of
Strata
Appeals
Tribunal.
Fourth
Schedule.

15A.—(1) There is hereby established for the purposes of hearing appeals, a body to be known as the Strata Appeals Tribunal, and the provisions of the Fourth Schedule shall have effect with regard to the constitution and operation of the Tribunal and otherwise in relation thereto.

(2) Any person aggrieved by a decision of—

- (a) the corporation, in the case of the aggrieved person being a proprietor of a strata lot; or
- (b) the Commission,

may appeal to the Tribunal in the prescribed manner, upon payment of any prescribed fee.

(3) Before determining an appeal, the Tribunal shall give the parties the opportunity to be heard by the Tribunal.

(4) The Tribunal may, on an appeal under subsection (2)—

- (a) allow the appeal and set aside or vary the decision of the corporation or the Commission, as the case may be; or

(b) dismiss the appeal and confirm the decision of the corporation or the Commission, as the case may be.

(5) The amount in respect of which the Tribunal may order payment under subsection (6) of section 5A, shall not exceed the amount in respect of which a Resident Magistrate's Court has jurisdiction in actions arising from contract.

(6) Where an order of the Tribunal is made pursuant to subsection (6) of section 5A, the Tribunal shall forthwith cause the order to be lodged with the Clerk of the Courts for the parish in which the land comprising the strata lot to which the order relates is situated.

(7) An order which is lodged with the Clerk of the Courts in accordance with this section shall be treated as if it were an order made by the Resident Magistrate's Court for the payment of money, and the provisions of sections 213 to 247 of the Judicature (Resident Magistrates) Act in respect of execution, shall apply in relation thereto as they apply in relation to an order made by the Court.

(8) Costs of the appeal proceedings including court costs and any attorney's costs may be recovered from the unsuccessful party.

(9) All matters to be determined by the Tribunal shall be submitted to the Tribunal through the Commission.

(10) The Tribunal may also adjudicate upon matters affecting the administration and management of strata properties referred to it by—

(a) the corporation;

- (b) the proprietor of a strata lot who has first notified the corporation of his intention to refer the matter; or
- (c) the Commission,

and may make an order in settlement of each matter.

(11) A decision made by the Tribunal on an appeal made pursuant to this section shall be binding on the parties to the appeal.

(12) A person who fails to comply with a decision or an order made by the Tribunal, shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars and in default of payment to imprisonment for a term not exceeding one year.”.

Amendment
of section 16
of principal
Act.

13. Section 16 of the principal Act is amended by—

- (a) re-lettering paragraph (h) as paragraph (k);
- (b) inserting next after paragraph (g) the following as paragraphs (h), (i) and (j)—
 - (h) prescribing the manner in which corporations are to be registered with the Commission;
 - (i) prescribing the matters in respect of which developers are to inform prospective purchasers of strata lots;
 - (j) prescribe the minimum period of notice to be given under section 3B(2)(a)(i) and (iii).”.

Amendment
of section 18
of principal
Act.

14. Section 18 of the principal Act is amended by—

- (a) renumbering the section as subsection (1) of the section;
- (b) deleting from subsection (1) as renumbered the words “four hundred dollars” and substituting therefor the words “five hundred thousand dollars”;

- (c) inserting next after subsection (1) as renumbered the following as subsections (2) and (3)—

“ (2) Where the Court is satisfied on receipt of an application of the corporation that a proprietor has contravened any of the provisions of the by-laws set out in paragraph 1 of the First Schedule or any of the by-laws set out in the Second Schedule then the Court may—

First
Schedule.
Second
Schedule.

- (a) order the proprietor to pay to the corporation a pecuniary penalty not exceeding one million dollars; or
- (b) grant an injunction preventing the proprietor from engaging in conduct in contravention of the by-laws; or
- (c) grant such order and injunction.

(3) In exercising the powers referred to in subsection (2), the Court shall consider—

- (a) the nature of the default of the proprietor;
- (b) the nature of any loss or damage suffered by any person as a result of the default;
- (c) the circumstances of the default;
- (d) any previous determination in relation to a breach of the by-laws, against the proprietor to whom the application relates.”.

15. The principal Act is amended by inserting therein next after section 18 the following as section 18A—

Insertion of
new section
18A in
principal Act.

18A.—(1) The Minister may, by order subject to affirmative resolution of the House of Representatives amend or vary any penalty or fine imposed by this Act.

“Minister
may amend
penalties,
Schedule,
etc. by order.

(2) The Minister may by order, subject to affirmative resolution of the House of Representatives, amend any of the Schedules to this Act.”.

Insertion of
new section
20 in the
Principal Act.

16. The principal Act is amended by inserting therein next after section 19 the following as section 20—

“Review of
Act by
Parliamen-
tary
Committee.

20. There shall be a review of this Act by a Committee of both Houses of Parliament, appointed for that purpose, not later than three years after the date of commencement of the Registration (Strata Titles) (Amendment) Act, 2009.”.

Amendment
of First
Schedule of
principal Act.

17. The First Schedule to the principal Act is amended in the manner specified in Part I of the Schedule to this Act.

Insertion of
new Third
and Fourth
Schedules in
principal Act.

18. The principal Act is amended by inserting next after the Second Schedule the provisions specified in Part II of the Schedule to this Act, as the Third and Fourth Schedules to the principal Act.

Transitional.

19. Every corporation that was in existence prior to the date of commencement of this Act shall, within ninety days after that date, apply to be registered under section 4 of the principal Act as amended by this Act, and the provisions of that section shall apply with such modification as may be necessary.

SCHEDULE (Sections 15 and 16)

Further Amendments to Principal Act

PART I

Amendments to First Schedule to principal Act

1. In paragraph 1—
 - (a) in sub-paragraph (b), insert next after the word “outgoings” a comma and the word “levies”;
 - (b) delete the full stop appearing at the end of sub-paragraph (f) and substitute therefor a semicolon;
 - (c) insert next after sub-paragraph (f) the following as sub-paragraphs (g), (h) and (i)—
 - “(g) where he is unable to carry out his obligations under this Act by reason of absence from Jamaica, or inability to act (whether due to illness or otherwise) appoint an agent to act on his behalf and shall notify the corporation and the mortgagee, if any, in writing thereof stating the period for which the agent is appointed to act;
 - (h) inform the executive committee of any change of his address;
 - (i) furnish any lessee, tenant or occupier of his strata lot with a copy of the by-laws for the time being governing the strata property.”.
2. In paragraph 2—
 - (a) delete the full stop at the end of sub-paragraph (e) and substitute therefor a semicolon;
 - (b) insert next after sub-paragraph (e) the following as sub-paragraph (f)—
 - “(f) from time to time fix the rate of interest which shall be charged on arrears of contributions.”.
3. In paragraph 8 delete the words “Seven days” and substitute therefor the words “Subject to paragraph 8A,”.
4. Insert next after paragraph 8 the following as paragraph 8A—

“8A. In respect of all general meetings—

 - (a) notice of the meeting shall be in writing and shall be given to each proprietor or his agent, as the case may be, at least fourteen days before the date of the meeting;

- (b) service of the notice of the meeting shall—
- (i) either be by personal service or by registered post addressed to the proprietor and his agent, or may be sent by electronic mail or facsimile, to the correct electronic mail address or facsimile number of the proprietor as may be notified by that proprietor from time to time in accordance with the by-laws; and
 - (ii) shall be deemed to be effected at the time at which a letter would be delivered in the ordinary course of post; and
- (c) the corporation shall, not less than fourteen days before the date of the meeting affix to a conspicuous place in the common property a copy of the notice of the meeting and such notice shall remain so affixed until the meeting has been held.”.

5. Insert next after paragraph 22 the following as paragraph 22A—

"Audited statements of accounts. 22A. The executive committee shall cause to be transmitted to the Commission a copy of the audited statement of accounts or subject to the approval of the Commission, a copy of the accounts prepared in accordance with generally accepted principles of accounting and signed by the chairman and at least one other member of the executive committee.”.

6. Insert next after paragraph 33 the following as paragraph 33A—

"Limitation on voting rights. 33A. Where—

- (a) a proprietor owns less than one hundred percent, but more than one-third of the total unit entitlement in a strata plan; and
- (b) a vote by poll or resolution is called,

the value of that proprietor’s vote shall be reduced to forty percent of his unit entitlement rounded down to the nearest whole number.”.

PART II

“ THIRD SCHEDULE (Section 3A)

Part I

Constitution of Commission of Strata Corporations

1.—(1) The Commission shall consist of not less than seven nor more than eleven members appointed by the Minister. Appointment of members.

(2) The members of the Commission shall be selected by the Minister from among persons appearing to him to—

- (a) have ability and experience in any or all of the following areas, namely; matters relating to the real estate industry (including the management of strata properties, land economy and valuation surveying), building societies, general insurance, accounting and law;

- (b) otherwise be suitably qualified to be so appointed.

2.—(1) The Minister shall appoint one of the members of the Commission to be its chairman and, unless the Minister otherwise determines, the Chairman of the Real Estate Board shall be the Chairman of the Commission. Chairman.

(2) In the case of the absence of the Chairman from or his inability to act at any meeting, members of the Commission present at such meeting shall elect one of their number to act as Chairman at that meeting.

3. No person shall be qualified for appointment as a member of the Commission who— Disqualification for appointment to Commission.

- (a) is a member of the Senate or the House of Representatives; or
- (b) has been convicted of an offence involving fraud, dishonesty or moral turpitude.

4. The Minister may appoint any person to act temporarily in the place of any member of the Commission in the case of the absence or inability to act of such member and the provisions of paragraph 1 shall apply *mutatis mutandi* to such temporary appointment. Temporary appointments.

5. The appointment of every member of the Commission shall be evidenced by instrument in writing, which shall specify the Tenure of office.

period of office of the member, which shall not exceed three years, and each member shall be eligible for reappointment.

Resignation. 6.—(1) Any member other than the Chairman may at any time resign his office by instrument in writing addressed to the Chairman who shall forthwith cause it to be forwarded to the Minister and that member shall cease to hold office as from the date of receipt of the instrument by the Minister.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt by the Minister of the instrument.

Revocation of appointment. 7. The Minister may terminate the appointment of any member if such member—

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) becomes bankrupt or compounds with, or suspends payment to, his creditors;
- (c) is convicted and sentenced to a term of imprisonment or to death;
- (d) becomes a person who would have been disqualified for appointment on the grounds indicated in paragraph 3;
- (e) fails, without reasonable excuse, to carry out any of the functions conferred *or* imposed on him under this Act.

Appointment of committees. 8.—(1) The Commission may, with the approval of the Minister, appoint committees, for special purposes connected with the functions of the Commission, where in the opinion of the Commission such functions would be better regulated and managed by committees.

(2) The Commission shall in relation to the appointment of a committee determine—

- (a) the number of members;
- (b) the terms of their appointment;
- (c) the quorum; and

(d) the area within which the committee shall exercise its authority.

(3) Each committee shall include one member who is a member of the Commission and such other members as the Commission thinks fit.

(4) The validity of the proceedings of a committee shall not be affected by any vacancy or defect in appointment of a member.

9. The names of all members of the Commission as first constituted, and every change in the membership thereof, shall be published in the *Gazette*. Publication of membership.

10.—(1) The seal of the Commission shall be authenticated by the signatures of the Chairman or any member of the Commission authorized to act in that behalf and the Secretary of the Commission. Seal and execution of documents.

(2) All documents other than those required by law to be under seal and all decisions of the Commission may be signified under the hand of the Chairman or any member authorized to act in that behalf or the Secretary of the Commission.

11.—(1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Commission shall determine. Procedure and meetings.

(2) The Chairman may at any time call a special meeting of the Commission, and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two members of the Commission.

(3) The Chairman or the person appointed in accordance with paragraph 2(2) shall preside at the meetings of the Commission and when so presiding the Chairman or the person appointed, as the case may be, shall have an original and a casting vote in any case in which the voting is equal.

(4) The quorum of the Commission shall be fifty per cent of the number of members rounded down to the nearest whole number.

(5) Subject to the provisions of this Schedule, the Commission may regulate its own proceedings.

(6) The validity of any proceeding of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

Delegation. 12.—(1) The Commission may, either generally or as otherwise specified in the instrument of delegation, delegate to any of its officers so specified, any of its functions under this Act or any relevant Act, other than the power of delegation.

(2) A delegation under sub-paragraph (1) shall be revocable by the Commission and no delegation shall prevent the exercise of a power by the Commission.

Remuneration of members. 13. There shall be paid from the funds of the Commission to the Chairman and other members of the Commission such remuneration, if any (whether by way of honorarium, salary or travelling or other allowances), as the Minister may determine.

Disclosure of interest. 14.—(1) A member who is in any way directly or indirectly interested in a contract made or proposed to be made by the Commission, or in any other matter whatsoever which falls to be considered by the Commission, shall disclose the nature of his interest at a meeting of the Commission and the disclosure shall be recorded in the minutes of the meeting; and the member shall not take part in any deliberation or decision of the Commission with respect to the contract or to the other matter, as the case may be.

(2) A notice given by a member at a meeting of the Commission to the effect that he is a member of a specific company or firm and is to be regarded as interested in any contract which is made after the date of the notice with the company or firm shall, for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to any contract so made.

(3) A member need not attend in person at a meeting of the Commission in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by notice which is taken into consideration and read at such a meeting.

Indemnity. 15. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Commission in respect of any act done *bona fide* in pursuance or execution of or intended execution of this Act.

Part II

1.—(1) The Commission may appoint and employ at such remuneration and subject to such terms and conditions as it thinks fit, a Secretary and such other officers, employees and agents as it thinks necessary for the proper carrying out of the provisions of this Act, so, however, that no salary in excess of the prescribed rate shall be assigned to any post without the prior approval of the Minister with responsibility for the public service.

Appointment
of Secretary
and other
officers,
employees
and agents.

(2) For the purposes of subsection (1), the prescribed rate means four million dollars per annum or such higher rate as the Minister with responsibility for the public service may, from time to time, by order, prescribe.

FOURTH SCHEDULE (Section 15A)

Constitution and Procedure of Appeals Tribunal

- Constitution of Tribunal.** 1.—(1) The Tribunal shall consist of not less than three nor more than five members appointed by the Minister from the following—
- (a) a person who is a Judge or Resident Magistrate who has retired;
 - (b) an attorney-at-law practising at the private bar;
 - (c) a person appearing to the Minister to have experience in property management matters; and
 - (d) two persons who are public accountants or members of the Institute of Chartered Accountants of Jamaica.
- (2) The Minister shall appoint one of the members of the Tribunal to be the Chairman thereof.
- (3) For the hearing of any appeal under this Act, the Tribunal may consist of one member sitting alone if the parties to the appeal agree.
- Tenure of office.** 2.—(1) The appointment of every member of the Tribunal shall be evidenced by instrument in writing and shall be for a period not exceeding three years.
- (2) Every member of the Tribunal shall be eligible for reappointment.
- (3) The Minister may at any time revoke the appointment of any member of the Tribunal.
- Resignation.** 3.—(1) Any member of the Tribunal other than the Chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman, and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Tribunal.
- (2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt of such instrument by the Minister.
- Publication of membership.** 4. The names of the members of the Tribunal as first constituted and every change in membership thereof, shall be published in the *Gazette*.

5. All documents made by, and all decisions of, the Tribunal may be signified under the hand of the Chairman or any member of the Tribunal authorized to act in that behalf. Authentica-
tion of
documents.

6.—(1) The Tribunal shall meet at such times as may be necessary or expedient for transaction of business or conduct of hearings and such meetings shall be held at such places and times and on such days as the Tribunal may determine. Procedure
regarding
meetings.

(2) The Chairman or any other person appointed to act temporarily as Chairman shall preside at meetings of the Tribunal.

(3) Subject to paragraph 1(3), a decision of the Tribunal shall be by a majority of votes of the members and in any case in which the voting is equal the Chairman shall have a casting vote in addition to his original vote.

(4) The Tribunal shall have power to regulate its own proceedings.

(5) Proper records of all proceedings of the Tribunal shall be kept.

7. There shall be paid from the funds of the Commission to the Chairman and other members of the Tribunal such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine. Remunera-
tion of
members.

8. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Tribunal in respect of an act done *bona fide* in pursuance of or execution or intended execution of the provisions of this Act. Protection of
members.

9. Any member of the Tribunal who has any interest, directly or indirectly, in any matter brought before the Tribunal shall— Disclosure of
interest.

(a) disclose the nature of the interest to the Tribunal; and

(b) not take part in any deliberation or decision of the Tribunal with respect to that matter.

10. The office of Chairman or member shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.” Office of
member not a
public office.

Passed in the House of Representatives this 27th day of October, 2009 with twenty-seven (27) amendments.

DELROY H. CHUCK,
Speaker.

Passed in the Senate this 4th day of December, 2009 with twenty-nine (29) amendments.

OSWALD G. HARDING, OJ, CD, QC,
President.

On the 15th day of December, 2009 the House of Representatives agreed to the amendments made by the Senate.

DELROY H. CHUCK,
Speaker.

This printed impression has been carefully compared by me with the Act which has passed the House of Representatives and Senate, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.