

No. 71

3rd Session, 15th Legislature, Alberta
14 Elizabeth II

BILL 71

A Bill to Facilitate the Division of Buildings into
Separately Owned Units

HON. MR. MANNING

Explanatory Note

General. This Bill will establish a scheme whereby a person can acquire separate ownership of a part of a building, such as an apartment or an office suite. Under the scheme a plan dividing a building into "units" can be registered in the Land Titles Office and thereupon a certificate of title is issued to each unit. The Bill also provides for the establishment of a corporation consisting of all the owners to manage the building. There are also provisions relating to insurance, assessment, taxation and other ancillary matters. In recent years legislation of this nature has been enacted in a number of other countries and presently several provinces are considering the adoption of similar legislation.

2. Definitions.

BILL

No. 71 of 1966

An Act to Facilitate the Division of Buildings into Separately Owned Units

(Assented to _____, 1966)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Condominium Property Act*".

2. (1) In this Act,

- (a) "board" means the board of a corporation as provided for in section 17;
- (b) "by-laws" means the by-laws of a corporation;
- (c) "common property" means so much of the land comprised in a condominium plan as is not comprised in any unit shown in a condominium plan;
- (d) "condominium plan" means a plan that
 - (i) is described in the heading thereto as a condominium plan,
 - (ii) shows the whole or any part of the building comprised therein as being divided into two or more units, and
 - (iii) complies with requirements of section 4, and includes a plan of redivision of any units in a condominium plan registered under this Act;
- (e) "corporation" means a body incorporated by section 14;
- (f) "local authority" means, in relation to a parcel, the municipal body governing the area in which the parcel is situated;
- (g) "owner" means the owner of a unit;
- (h) "parcel" means the land comprised in a condominium plan;
- (i) "unanimous resolution" means a resolution unanimously passed at a properly convened meeting of a corporation at which all persons entitled to exercise the powers of voting conferred by this Act or the by-laws are present personally or by proxy at the time of the motion;

3. Registration of plan showing the division of the building.

4. Issue of certificates of title for each unit.

5. The owner of a unit also owns a share of the common property that is not included in any unit.

- (j) "unit" means an area designated as a unit by a condominium plan;
 - (k) "unit factor" means the unit factor for a unit as specified or apportioned in accordance with clause (f) of section 7 or subsection (5) of section 9, as the case may be.
- (2) Other expressions used in this Act and not defined in subsection (1) have the same meanings as may be assigned to them in *The Land Titles Act*.

3. (1) A building may be divided into units by the registration of a condominium plan in the manner provided by this Act and the regulations.

(2) For the purposes of *The Land Titles Act*, a condominium plan shall be deemed upon registration to be embodied in the register.

(3) This Act applies only with respect to land held in fee simple, excepting thereout all mines and minerals.

4. (1) Upon registering a condominium plan the Registrar

(a) shall cancel the certificate of title to the parcel described in the plan, except as to any mines and minerals comprised therein, and

(b) shall issue a separate certificate of title for each unit described in the plan,

and any interests affecting the parcel that are notified on the certificate of title cancelled under clause (a) shall be endorsed upon the condominium plan and not upon the certificates of title issued under clause (b).

(2) No more than one unit may be included in one certificate of title and no other land, except the owner's share in the common property, may be included in the same certificate of title with a unit.

(3) After a certificate of title to a unit is issued pursuant to subsection (1), the unit comprised therein may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as any land held under *The Land Titles Act*.

5. (1) The Registrar, in issuing a certificate of title for a unit, shall certify therein the owner's share in the common property.

(2) The common property comprised in a registered condominium plan is held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

(3) Except as provided in this Act, a share in the common property shall not be disposed of or become subject to any charge except as appurtenant to the unit

6. Title to unit may be subject to interests registered on the condominium plan.

7. Information to be shown on a condominium plan. The unit factor referred to in clause (f) determines the owner's share of the common property, his voting rights in the management of the building, his share of the maintenance costs of the common property and his share of the municipal taxes on the building.

8. A condominium plan is to be accompanied by certificates that the building exists on the common property, that it is divided in the manner shown on the plan and that the division will not result in a contravention of a zoning by-law, etc.

of an owner and any disposition of or charge upon a unit operates to dispose of or charge that share in the common property without express reference thereto.

6. (1) An owner holds his unit and his share in the common property subject to any interests affecting the unit or the common property notified on the condominium plan.

(2) Except to the extent that any interest notified on a condominium plan relates to a particular unit, the owner of a unit is only liable in respect of any such interest in proportion to the unit factor for his unit.

Condominium Plans

7. (1) Every plan presented for registration as a condominium plan shall

- (a) delineate the external surface boundaries of the parcel and the location of the building in relation thereto,
- (b) bear a statement containing such particulars as may be necessary to identify the title to the parcel,
- (c) include a drawing illustrating the units and distinguishing such units by numbers or other symbols,
- (d) define the boundaries of each unit in the building by reference to floors, walls and ceilings,
- (e) show the approximate floor area of each unit,
- (f) have endorsed upon it a schedule specifying in whole numbers the unit factor for each unit in the parcel,
- (g) have endorsed upon it the address at which documents may be served on the corporation concerned in accordance with section 42, and
- (h) contain such other features as may be prescribed by the regulations.

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

8. (1) Every plan presented for registration as a condominium plan shall be endorsed with or accompanied by

- (a) a certificate of an Alberta land surveyor that the building shown on the plan is within the external surface boundaries of the parcel that is the subject of the plan and, if eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel,

9. Provision is made for the division of a unit into two or more separate units.

- (b) a certificate of a registered architect that the units shown in the plan are the same as those existing, and
 - (c) a certificate of the clerk of the local authority that the proposed division of the building, as illustrated in the plan, has been approved by the local authority.
- (2) In respect of an application for a certificate under clause (c) of subsection (1), the local authority shall direct the issue of the certificate if it is satisfied that
- (a) separate occupation of the proposed units will not contravene any development control or zoning by-law,
 - (b) any consent or approval required under such a by-law has been given in relation to the separate occupation of the proposed units, and
 - (c) the building and the division of the building into units for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case and the public interest.
- (3) The provisions relating to the subdivision of land contained in *The Planning Act* or the regulations thereunder do not apply to the division of a building pursuant to subsection (1) of section 3, if the surface boundaries of the parcel correspond to the boundaries of a lawful parcel within the meaning of *The Planning Act*, and any disposition of common property does not contravene the provisions of that Act.

9. (1) Any owner or owners may, with the approval of the local authority, redivide his or their units by registering a condominium plan relating to the unit or units so redivided in the manner provided by this Act for the registration of condominium plans.

(2) Except as provided in this section, the provisions of this Act relating to condominium plans apply *mutatis mutandis* to such a redivision.

(3) Notwithstanding section 14, the owners of units in a condominium plan of redivision are not a corporation, but are, upon the date of registration of the plan of redivision, members of the corporation formed on registration of the original plan.

(4) On registration of a condominium plan of redivision, units comprised therein are subject to the burden and have the benefit of any easements affecting such of the units in the original plan as are included in the plan of redivision.

(5) The schedule endorsed on a plan of redivision, as required by clause (f) of section 7, shall apportion among the units the unit factor or factors for such unit or units in the original plan as are included in the redivision.

10. Easements in favour of the owner of a unit.

11. Easements against the owner of a unit.

(6) Before registering a condominium plan of redivision, the Registrar shall amend the original registered plan in the manner prescribed by the regulations.

(7) Upon registration of a condominium plan of redivision, the land comprised therein shall not be dealt with by reference to units in the original plan.

Easements

10. After the registration of a condominium plan, there is implied in respect of each unit shown therein,

- (a) in favour of the owner of the unit and as appurtenant thereto, an easement for the subjacent and lateral support thereof by the common property and by every other unit capable of affording support, and
- (b) in favour of the owner of the unit, and as appurtenant thereto, an easement for the shelter thereof by the common property and by every other unit capable of affording shelter, and
- (c) in favour of the owner of the unit, and as appurtenant thereto, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit.

11. (1) After the registration of a condominium plan, there is implied in respect of each unit shown therein,

- (a) as against the owner of the unit, an easement, to which the unit is subject, for the subjacent and lateral support of the common property and of every other unit capable of enjoying support, and
- (b) as against the owner of the unit, an easement, to which the unit is subject, to provide shelter to the common property and to every other unit capable of enjoying the shelter, and
- (c) as against the owner of the unit, easements, to which the unit is subject, for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being existing within the unit, as appurtenant to the common property and also to every other unit capable of enjoying those easements.

12. The easements under sections 10 and 11 exist without special mention on the certificates of title.

13. Rights ancillary to easements.

14. A corporation is created consisting of all the owners of all the units.

15. Voting rights set out.

(2) Where an easement is implied by this section, the owner of any utility service who is providing his service to the parcel, or to any unit therein, is entitled to the benefit of any of those easements that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service.

12. Easements or restrictions as to user implied or created by this Act or the by-laws take effect and are enforceable

- (a) without any memorial or notification on that part of the register constituting titles to the dominant or servient tenements, and
- (b) without any express indication of those tenements.

13. All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied by this Act, including the right of an owner of a dominant tenement to enter a servient tenement and replace, renew or restore any thing the dominant tenement is entitled to benefit from.

Condominium Corporation

14. (1) Upon registration of a condominium plan, there is constituted a corporation under the name "The Owners: Condominium Plan No." (the number to be specified being the number given to the plan upon registration).

(2) A corporation consists of all those persons

- (a) who are owners of units in the parcel to which the condominium plan applies, or
- (b) who are entitled to the parcel where the condominium arrangement is terminated pursuant to section 30 or 31.

(3) Without limiting the powers of the corporation under section 14 of *The Interpretation Act, 1958*, a corporation may

- (a) sue for and in respect of any damage or injury to the common property caused by any person, whether an owner or not, and
 - (b) be sued in respect of any matter connected with the parcel for which the owners are jointly liable.
- (4) *The Companies Act* does not apply to a corporation.

Voting Rights

15. (1) The voting rights of the owner of a unit are determined by the unit factor for his unit.

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

16. Provision for voting where the owner is incapable.

17. Board of management of corporation provided for.

- (a) if a unanimous resolution is required, may not be exercised by the owner, but is exercisable by the registered mortgagee first entitled in priority, and
 - (b) in other cases, is exercisable by the mortgagee first entitled in priority, and may not be exercised by the owner if the mortgagee is present personally or by proxy.
- (3) Subsection (2) does not apply unless the mortgagee has given written notice of his mortgage to the corporation.

16. (1) Any powers of voting conferred by this Act or the by-laws may be exercised

(a) in the case of an owner who is an infant, by the guardian of his estate or, if no guardian has been appointed, by the Public Trustee, or

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

(2) Where the Supreme Court, upon the application of the corporation or of any owner, is satisfied that there is no person capable, willing or reasonably available to vote in respect of a unit, the Supreme Court

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

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

(3) On making an appointment under this section, the Supreme Court may make such order as it considers necessary or expedient to give effect to the appointment.

Board of a Corporation

17. (1) A corporation shall have a board of managers which shall be constituted as provided by the by-laws of the corporation.

(2) The powers and duties of a corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the board of the corporation.

(3) All acts done in good faith by a board are, notwithstanding that it is afterwards discovered that there was some defect in the election or appointment or continuance in office of any member of the board, as valid as if the member had been properly elected or appointed or had properly continued in office.

18. Corporation to be governed by by-laws.

19. Duty of corporation to take care of the common property.

By-laws

18. (1) A building shall be regulated by by-laws made by the corporation which shall provide for the control, management, administration, use and enjoyment of the units and of the common property.

(2) Until by-laws are made in that behalf, the by-laws set forth in Schedule A and Schedule B are, on and after the registration of a condominium plan, in force for all purposes in relation to the parcel and the units and common property therein.

(3) The by-laws set forth in Schedule A shall not be added to, amended or repealed except by unanimous resolution.

(4) An addition to or an amendment or repeal of any by-law set forth in Schedule A has no effect

(a) until the corporation lodges a copy thereof with the Registrar, and

(b) until the Registrar has made reference thereto on the registered plan.

(5) No by-law or addition to or amendment or repeal of any by-law of a corporation is capable of operating to prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing therewith or to destroy or modify any easement implied or created by this Act.

(6) The by-laws of a corporation bind the corporation and the owners to the same extent as if the by-laws had been signed and sealed by the corporation and by each owner and contained covenants on the part of each owner with every other owner and with the corporation to observe and perform all the provisions of the by-laws.

(7) A corporation shall, on the application of an owner or any person authorized in writing by him, make its by-laws available for inspection.

Powers and Duties of Corporation

19. (1) A corporation is responsible for the enforcement of its by-laws and the control, management and administration of the common property.

(2) A corporation shall be regulated in accordance with the by-laws thereof.

(3) Without restricting the generality of subsection (1), the duties of a corporation include the following:

(a) to keep in a state of good and serviceable repair and properly maintain the common property;

(b) to comply with notices or orders by any local authority or public authority requiring repairs to or work to be done in respect of the parcel;

20. Power of corporation to levy money on the owners of the units, in proportion to their unit factors, to meet administrative expenses.

21. Duty of the corporation to insure the building against damage.

- (c) to comply with any reasonable request for the names and addresses of the persons who are members of the board of the corporation.

20. (1) In addition to its other powers under this Act, the powers of a corporation include the following:

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

(2) Subject to clause (b) of subsection (1), any contribution levied as provided in that subsection is due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, and may be recovered by an action for debt by the corporation

- (a) from the owner entitled at the time when the resolution was passed, and
- (b) from the owner entitled at the time when the action was instituted,

both jointly and severally.

(3) A corporation shall, on the application of an owner or any person authorized in writing by him, certify

- (a) the amount of any contribution determined as the contribution of the owner,
- (b) the manner in which the contribution is payable, and
- (c) the extent to which the contribution has been paid by the owner,

and, in favour of any person dealing with that owner the certificate is conclusive proof of the matters certified therein.

Insurance

21. (1) It is the duty of a corporation:

- (a) to insure and keep insured the building to the replacement value thereof against fire and such other risks as may be prescribed by the regulations, unless otherwise resolved by unanimous resolution;

22. Right of an owner, when the building is insured, to insure his unit for the amount owing under a mortgage on his unit.

23. Right of an owner to insure his unit when the building is uninsured or is not fully insured.

- (b) to insure against such other risks as may be determined by a unanimous resolution;
 - (c) subject to sections 30 and 31, to apply insurance moneys received by it in respect of damage to the building forthwith in rebuilding and reinstating the building so far as that may lawfully be effected;
 - (d) to pay premiums on any policies of insurance effected by it.
- (2) For the purpose of effecting any insurance under clause (a) of subsection (1), a corporation has an insurable interest to the replacement value of the building and for the purpose of effecting any other insurance under subsection (1) has an insurable interest in the subject matter of that insurance.
- (3) A policy of insurance authorized by this section and taken out by a corporation in respect of the building is not liable to be brought into contribution with any other policy of insurance except another policy authorized by this section in respect of the same building.

22. (1) Where a building is insured to its replacement value the owner of a unit may effect a policy of insurance in respect of any damage to his unit in a sum equal to the amount secured, at the date of any loss referred to in the policy, by mortgage upon his unit.

(2) Where a policy of insurance authorized by this section is in force

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

23. (1) Where a building is uninsured or has been insured to less than its replacement value, an owner may

24. Relation of owner's insurance against damage to other insurance.

25. Procedure for disposing of part of the common property by transfer or lease.

- (a) effect a policy of insurance in respect of any damage to his unit in a sum equal to the replacement value of his unit less a sum representing the amount to which his unit is insured under any policy of insurance effected on the building, or
 - (b) notwithstanding any existing policies, effect a policy of insurance in respect of damage to his unit in a sum equal to the amount secured, at the date of any loss referred to in the last mentioned policy, by mortgages upon his unit, and subsection (2) of section 22 applies in respect of any payment pursuant to that last mentioned policy.
- (2) For the purposes of subsection (1), the amount for which a unit is insured under a policy of insurance effected in respect of the building shall be determined by multiplying the value stated in the policy by the unit factor for the unit and dividing the product so obtained by the sum of the unit factors for all units.

24. (1) A policy of insurance authorized by section 22 or 23 and taken out by an owner in respect of damage to his unit is not liable to be brought into contribution with any other policy of insurance except another policy authorized by those sections and taken out in respect of damage to the same unit.

(2) Nothing in section 22 or 23 limits the right of an owner to insure against risks other than damage to his unit.

(3) Sections 22 and 23 apply notwithstanding *The Alberta Insurance Act* or any other law relating to insurance.

Dispositions of Common Property

25. (1) By a unanimous resolution a corporation may be directed to transfer or lease the common property, or any part thereof.

(2) Where the board is satisfied that the resolution was properly passed and that all persons having registered interests in the parcel and all other persons having interests, other than statutory interests, notified to the corporation

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

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

the corporation shall execute the appropriate transfer or lease.

(3) A transfer or lease executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the common property and the receipt of the corporation for the purchase money, rent,

26. Covenants benefiting the parcel.

27. Procedures for granting restrictive covenants.

premiums or other moneys payable to the corporation under the terms of the transfer or lease is a sufficient discharge of and exonerates the persons taking under the transfer or the lease from any responsibility for the application of the moneys expressed to have been so received.

(4) The Registrar shall not register a transfer or lease authorized under this section unless it has endorsed thereon or is accompanied by a certificate under the seal of the corporation stating

- (a) that the resolution was properly passed,
- (b) that the transfer or lease conforms with the terms thereof, and
- (c) that all necessary consents were given.

(5) The certificate referred to in subsection (4) is,

- (a) in favour of a purchaser or lessee of the common property, or part thereof, and
- (b) in favour of the Registrar,

conclusive proof of the facts stated therein.

(6) Upon the filing for registration of a transfer of common property, the Registrar

- (a) shall, before issuing a certificate of title, amend the registered condominium plan by deleting therefrom the common property comprised in the transfer, and
- (b) shall register the transfer by issuing to the transferee a certificate of title for the land transferred, but no notification of the transfer shall be made on any other certificate of title in the register.

(7) Upon the filing for registration of a lease of common property, the Registrar shall register the lease by noting it on the registered condominium plan in the manner prescribed by the regulations.

26. By a unanimous resolution a corporation may be directed to accept on behalf of the owners a grant of easement or a restrictive covenant benefiting the parcel.

27. (1) By a unanimous resolution a corporation may be directed to execute on behalf of the owners a grant of easement or a restrictive covenant burdening the parcel.

(2) When the board is satisfied that the resolution was properly passed and that

- (a) all persons having interests in the parcel, and
- (b) all other persons having interests, other than statutory interests, that have been notified to the corporation,

have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate instrument to grant the easement or covenant.

28. Appointment of administrator of the corporation may be made by court order.

29. Settlement scheme where building damaged.

(3) An instrument granting an easement or covenant executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the parcel, and the receipt of the corporation is a sufficient discharge of and exonerates all persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.

(4) The Registrar shall not register an instrument granting an easement or covenant authorized under this section unless it has endorsed thereon or is accompanied by a certificate under the seal of the corporation stating that the resolution was properly passed and that all necessary consents were given.

(5) The certificate referred to in subsection (4) is,

(a) in favour of a person dealing with the corporation under this section, and

(b) in favour of the Registrar,

conclusive proof of the facts stated therein.

(6) The Registrar shall register the instrument granting the easement or covenant by noting it on the registered condominium plan in the manner prescribed by the regulations.

Administration of Corporation

28. (1) A corporation or any person having an interest in a unit may apply to the Supreme Court for appointment of an administrator.

(2) The Supreme Court may, in its discretion on cause shown, appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit.

(3) The remuneration and expenses of an administrator appointed under this section are administrative expenses within the meaning of this Act.

(4) An administrator has, to the exclusion of the board and the corporation, the powers and duties of the corporation or such of those powers and duties as the Supreme Court orders.

(5) An administrator may delegate any of the powers so vested in him.

(6) The Supreme Court may, in its discretion on the application of an administrator or any person referred to in subsection (1), remove or replace the administrator.

Damage to Building

29. (1) Where a building is damaged but the condominium status is not terminated pursuant to section 30 or 31, an application to settle a scheme may be made to the Supreme Court by the corporation or by an owner or by a registered mortgagee of a unit.

30. Voluntary termination of condominium status of a building.

31. Termination of condominium status of a building by court order.

- (2) On an application under this section the Supreme Court may, by order, settle a scheme including provisions
- (a) for the reinstatement in whole or in part of the building, or
 - (b) for transfer of the interests of owners of units that have been wholly or partially destroyed to the other owners in proportion to their unit factors.
- (3) In the exercise of its powers under subsection (2), the Supreme Court may make such orders as it considers necessary or expedient for giving effect to the scheme, including orders
- (a) directing the application of insurance moneys received by the corporation in respect of damage to the building,
 - (b) directing payment of money by the corporation or by owners or by some one or more of them,
 - (c) directing such amendment of the condominium plan as the Supreme Court thinks fit, so as to include in the common property any accretion thereto, and
 - (d) imposing such terms and conditions as it thinks fit.
- (4) On any application to the Supreme Court under this section any insurer who has effected insurance on the building or any part thereof, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel.

Termination of Condominium

30. The condominium status of a building may be terminated by a unanimous resolution.

31. (1) An application to terminate the condominium status of a building may be made to the Supreme Court by the corporation or by an owner or by a registered mortgagee of a unit.

(2) On an application under this section, if the Supreme Court is satisfied that, having regard to the rights and interests of the owners as a whole, it is just and equitable that the condominium status of the building should be terminated, the Court may make a declaration to that effect.

(3) Where a declaration has been made pursuant to subsection (2), the Supreme Court may, by order, impose such conditions and give such directions, including directions for the payment of money, as it thinks fit for the purpose of adjusting as between the corporation and the owners and as amongst the owners themselves the effect of the declaration.

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

32. Effect of termination of condominium status.

33. Sale of property on termination of condominium status.

32. (1) Upon the condominium status of the building being terminated under section 30 or 31, the corporation shall forthwith lodge with the Registrar a notice of the termination in the form prescribed.

(2) Upon receipt of the notice referred to in subsection (1), the Registrar shall make a notification thereof on the registered condominium plan in the manner prescribed by the regulations and upon the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.

33. (1) Where the condominium status of a building is being terminated the corporation may be directed, by a unanimous resolution, to transfer the parcel, or any part thereof.

(2) Where the board is satisfied that the resolution was properly passed, and that

(a) all persons having registered interests in the parcel, and

(b) all other persons having interests, other than statutory interests, that have been notified to the corporation,

have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate transfer.

(3) A transfer executed pursuant to subsection (2) is valid and effective without execution by any person having an interest in the parcel, and the receipt of the corporation is sufficient discharge of and exonerates the person taking under the transfer from any responsibility for the application of the moneys expressed to have been so received.

(4) The Registrar shall not register a transfer executed pursuant to this section

(a) unless the transfer has endorsed thereon or is accompanied by a certificate under the seal of the corporation that the resolution was properly passed and that all necessary consents were given, and

(b) until the notification required by section 32 has been made on the registered condominium plan.

(5) A certificate made pursuant to subsection (4) is,

(a) in favour of a purchaser of the parcel, and

(b) in favour of the Registrar,

conclusive proof of the facts stated therein.

(6) Where land is transferred by a corporation pursuant to this section, the Registrar

(a) shall cancel the certificates of title relating to the units, and

34. Dissolution of corporation by court order.

35. Definitions for assessment and taxation provisions.

36. Assessing authority to be provided with copies of condominium plan.

37. Assessing authority to assess land and building as a single parcel.

(b) shall register the transfer by issue to the transferee of a certificate of title for the land transferred, whether or not he is in possession of the duplicate certificates of title for the units.

Dissolution of Corporation

34. (1) The Supreme Court on the application of a corporation or any member thereof or an administrator appointed under section 28 may, by order, provide for the winding up of the affairs of a corporation.

(2) By the same or subsequent order the Supreme Court may declare the corporation dissolved as on and from a date specified in the order.

Assessment and Taxation

35. In sections 35 to 39,

(a) "assessing Act" means any 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, and includes any by-laws or regulations made under the authority of any such Act;

(b) "assessing authority" means any local authority or any school board or other authority having power to assess and levy any rates, charges or taxes on land or in respect of the ownership of land.

36. (1) A corporation shall, within twenty-eight days after the registration of a condominium plan or any amendment thereof, furnish to the assessing authority two copies of the registered condominium plan or any amendment thereof, including all endorsements thereon, certified as prescribed by the regulations.

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

(a) the particulars shown on the certified copy of the plan or any amendment thereof furnished pursuant to subsection (1) are conclusive proof of those particulars, and

(b) the production by an assessing authority of what purports to be a certified copy of a condominium plan or any amendment thereof furnished pursuant to subsection (1) is *prima facie* proof that it is the certified copy so furnished.

37. (1) Where an assessing authority causes a parcel to be assessed pursuant to an assessing Act,

(a) the parcel shall, notwithstanding that or any other Act, be assessed as a single parcel and as if it were owned by a single owner, and

38. Assessment to be divided among owners of units in proportion to the unit factors of the units.

39. For the purpose of tax collection, each unit is treated as a separate dwelling. The owner of each unit is only liable for the share of the taxes levied against his unit. On non-payment of taxes by an owner, tax recovery proceedings can be taken against his unit.

(b) for the purposes of that assessment and all other purposes incidental thereto, including objection to an assessment, but not otherwise, the parcel and all improvements thereon shall be deemed to be owned by the corporation and by no other person, and the assessing authority is not required to make separate assessments of any part of a parcel otherwise than if the parcel were owned by a single owner.

(2) During the period from the registration of a condominium plan and until an assessment of the parcel showing the corporation as owner becomes effective for taxing purposes the assessment then in force shall, for the purposes of section 38, be deemed to be an assessment of the parcel made by the assessing authority showing the corporation as owner.

38. Where an assessing authority uses an assessment of a parcel showing a corporation as owner, the following provisions have effect:

- (a) the assessed value of the parcel shown in the assessment shall be apportioned by the assessing authority between the units comprised in the parcel in proportion to the unit factors for the respective units as shown on the registered condominium plan or any amendment thereof;
- (b) the corporation is not liable in relation to the parcel for any rate, charge or tax levied by the authority;
- (c) the owner of each unit comprised in the parcel is deemed to be the owner in fee simple in possession of the unit as if it were a separate parcel of land and improvements having an assessed value equal to that apportioned to it under clause (a) and is, subject to any exemptions or concessions that may be applicable, liable accordingly for any rate, charge or tax levied by the assessing authority on the owners of land and improvements.

39. Except as varied by sections 36 to 38, the provisions of any other Act authorizing or affecting

- (a) the imposition of rates, charges or taxes by an assessing authority in respect of land or improvements for municipal, school or hospital purposes, or
- (b) the collection and recovery of rates, charges or taxes by an assessing authority by proceedings against an assessed owner and his property,

apply *mutatis mutandis* in respect of the owner of a unit as if his unit and share in the common property were land and improvements or a parcel within the meaning of those Acts and any reference in those Acts to an owner or a joint owner includes the owner of a unit.

40. Procedure on applications to the Supreme Court under the Act.

41. Right to enter of local and public authorities.

42. Mail box for services of documents must be provided.

43. A "unit" constitutes a "homestead" under The Dower Act.

44. A unit is exempt from seizure and sale up to a value of \$8000.

45. Writs of execution against a corporation may be endorsed on the condominium plan.

Miscellaneous

40. (1) Every application to the Supreme Court under this Act shall be by petition unless otherwise prescribed by the regulations.

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

(3) The Supreme Court may, if it thinks fit, direct the trial of an issue and may give such directions as to all matters, including filing of pleadings, as appear necessary and proper for the final hearing of the application.

(4) The Supreme Court may from time to time vary any order made by it under this Act.

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

41. Where a local authority or public authority or person authorized by either of them has a statutory right to enter upon any part of a parcel, the authority or person is entitled to enter upon any other part of the parcel to the extent necessary or expedient to enable it or him to exercise its or his statutory powers.

42. (1) A corporation shall at or near the front building alignment of the parcel cause to be continually available a receptacle suitable for purposes of a postal delivery, with the name of the corporation clearly set out thereon.

(2) A document may be served on the corporation or the board thereof

(a) by post enclosed in a prepaid letter addressed to the corporation or the board, as the case may be, at the address shown on the condominium plan concerned, or any amendment thereof, or

(b) by placing the document in the receptacle mentioned in subsection (1).

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

43. For the purposes of *The Dower Act*, one unit, together with the owner's share in the common property, constitutes a homestead.

44. For the purposes of clause (k) of section 2 of *The Exemptions Act* a unit together with the owner's share in the common property shall be deemed to be a house and lot.

45. Where a judgment is obtained against a corporation a writ of execution in respect thereof may be registered against the condominium plan.

46. Application of The Mechanics Lien Act, 1960.

47. Offence and penalty.

48. Authority of Lieutenant Governor in Council to make regulations.

46. For the purposes of *The Mechanics Lien Act, 1960*:

- (a) where on the request of the owner of a unit
 - (i) work is done upon or in respect of that unit, or
 - (ii) material is furnished to be used in that unit,any lien that arises under that Act in consequence thereof is upon the estate of the owner in that unit and his share in the common property and any statement of lien filed in respect thereof shall be registered against the title to that unit;
- (b) where on the request of a corporation
 - (i) work is done upon or in respect of the common property or any unit, or both, or
 - (ii) material is furnished to be used in the common property or any unit, or both,intended for the benefit of the common property generally, any lien that arises under that Act in consequence thereof is upon the estates of all the owners in all the units and the common property;
- (c) where on the request of a corporation
 - (i) work is done upon or in respect of any unit, or
 - (ii) material is furnished to be used in any unit,intended for the benefit of that unit, any lien that arises under that Act in consequence thereof is upon the estate of the owner in that unit and his share in the common property;
- (d) where a statement of lien is filed with respect to any lien referred to in clause (b) or (c) the statement of lien shall be registered against the condominium plan and not against the title to any unit.

47. If default is made in complying with

- (a) any requirement of subsection (4) of section 18, subsection (1) of section 32, subsection (1) of section 36 or section 42, or
- (b) any duty to a municipality imposed on a corporation by this Act,

the corporation and each member of the board who is knowingly a party to the default is guilty of an offence and is liable upon summary conviction to a fine of not more than five hundred dollars.

48. The Lieutenant Governor in Council may make regulations not inconsistent with this Act for or with respect to

- (a) forms to be used for the purposes of this Act, including the form of certificates of title to units,
- (b) the manner of registering a condominium plan,
- (c) the fees to be paid for any procedure or function required or permitted to be done under this Act,
- (d) the practice and procedure governing application to the Supreme Court under this Act, and

49. Commencement of Act.

- (e) all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

49. This Act comes into force on a date to be fixed by Proclamation.

SCHEDULE A

1. An owner shall

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

2. The corporation shall

- (a) control, manage and administer the common property for the benefit of all owners,
- (b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings (including elevators) used in connection with the common property,
- (c) where practicable establish and maintain suitable lawns and gardens on the common property,

- (d) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one unit or common property, and
- (e) on the written request of an owner or registered mortgagee of a unit, produce to the owner or mortgagee, or a person authorized in writing by the owner or mortgagee, the policy or policies of insurance effected by the corporation, and the receipt or receipts for the last premium or premiums in respect thereof.

3. The corporation may

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

4. The board shall consist of not less than three nor more than seven owners and shall be elected at each annual general meeting, but where there are not more than three owners, the board shall consist of all owners.

5. Except where the board consists of all the owners, the corporation may by resolution at an extraordinary general meeting remove any member of the board before the expiration of his term of office and appoint another owner in his place to hold office until the next annual general meeting.

6. Any casual vacancy on the board may be filled by the remaining members of the board.

7. Except where there is only one owner, a quorum of the board is two where the board consists of four or less members, three where it consists of five or six members, and four where it consists of seven members.

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

9. At meetings of the board all matters shall be determined by simple majority vote.

10. The board may

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

11. The Board shall

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

12. A general meeting of owners shall be held within three months after registration of the condominium plan.

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

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

15. The board may whenever it thinks fit, and shall upon a requisition in writing made by owners representing twenty-five per cent of the total unit factors for the units, convene an extraordinary general meeting.

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

17. All business shall be deemed special that is transacted at an annual general meeting with the exception of the consideration of accounts and election of members to the board, or at an extraordinary general meeting.

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

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

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

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

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

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

24. On a show of hands each owner shall have one vote; on a poll the votes of owners shall correspond with the unit factors for their respective units.

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

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

27. Except in cases where by *The Condominium Property Act* a unanimous resolution is required, no owner is entitled to vote at any general meeting unless all contributions payable in respect of his unit have been paid.

28. Co-owners may vote by proxy jointly appointed by them, and in the absence of such a proxy are entitled to vote on a show of hands, except when the unanimous resolution of owners is required by *The Condominium Property Act*, but any one co-owner may demand a poll, and on any poll each co-owner is entitled to such part of the vote applicable to a unit as is proportionate to his interest in the unit, and the joint proxy, if any, on a poll has a vote proportionate to the interest in the unit of such of the joint owners as do not vote personally or by individual proxy.

29. Where owners are entitled to successive interests in a unit, the owner entitled to the first interest is alone entitled to vote, whether on a show of hands or a poll, and this by-law is applicable whether by *The Condominium Property Act* the unanimous resolution of owners is required or not.

30. Where an owner is a trustee he shall exercise the voting rights in respect of the unit to the exclusion of persons beneficially interested in the trust, and those persons may not vote.

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

32. (1) The by-laws in Schedule B of *The Condominium Property Act* may be added to, amended or repealed by special resolution of the corporation and not otherwise.

(2) A special resolution means a resolution passed at a general meeting of which at least fourteen days' notice specifying the proposed special resolution has been given by owners representing a majority of not less than three-fourths of the total unit factors for all the lots, and not less than three-fourth of all the owners.

SCHEDULE B

1. An owner shall not
 - (a) use his unit for any purpose that may be illegal or injurious to the regulation of the building,
 - (b) make undue noise in or about any unit or common property, and
 - (c) keep any animals on his unit or the common property after notice in that behalf from the board.
2. When the purpose for which a unit is intended to be used is shown expressly or by necessary implication or by the registered condominium plan, an owner shall not use his unit for any other purpose, or permit the unit to be so used.

No. 71

THIRD SESSION
FIFTEENTH LEGISLATURE
14 ELIZABETH II
1966

BILL

An Act to Facilitate the Division of
Buildings into Separately Owned
Units

Received and read the

First time

Second time

Third time

HON. MR. MANNING
