

CONSOLIDATION OF CONDOMINIUM ACT
R.S.N.W.T. 1988,c.C-15

(Current to: May 21, 2012)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1991-92,c.36
In force July 19, 1993
S.N.W.T. 1994,c.8,s.76
s.76 in force May 7, 2001: SI-001-2001
S.N.W.T. 1996,c.9
S.N.W.T. 1996,c.19
In force April 1, 1998: SI-005-98
S.N.W.T. 1998,c.5
S.N.W.T. 1998,c.24
In force March 31, 1999

AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.38
In force April 1, 1999

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2008,c.2,s.11
s.11 in force May 1, 2008: SI-004-2008
S.Nu. 2010,c.14,s.2
s.2 in force June 10, 2010

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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CONDOMINIUM ACT

INTERPRETATION

Definitions

1. (1) In this Act,

"bare land unit" means a part of the land included in a plan and designated as a unit by horizontal boundaries only without reference to any buildings and, unless otherwise shown on the plan, comprises

- (a) all of the space vertically above and below those boundaries, and
- (b) all of the material parts of the land within the space referred to in paragraph (a) at the time the declaration and plan are registered;
(*unité de terrain nu*)

"board" means the board of directors of a corporation; (*conseil*)

"buildings" means the buildings included in a property; (*bâtiments*)

"by-law" means a by-law of a corporation; (*règlement administratif*)

"claim" includes a right, title, interest, encumbrance or demand of any kind affecting land, but does not include the interest of an owner in his or her unit and common interest; (*créance*)

"common elements" means all the property except the units; (*parties communes*)

"common expenses" means the expenses of a performance of the objects and duties of a corporation and any expenses specified as common expenses in a declaration; (*dépenses communes*)

"common interest" means the interest in the common elements appurtenant to a unit; (*quote-part*)

"corporation" means a corporation created by subsection 12(1); (*société*)

"declaration" means a declaration referred to in section 5 and includes any amendments to a declaration; (*déclaration*)

"encumbrance" means a claim that secures the payment of money or the performance of any other obligation and includes a charge, a mortgage, a lien or an easement; (*charge*)

"land" means land for which a certificate of title is issued under the provisions of the *Land Titles Act*; (*bien-fonds*)

"owner" means the holder of a freehold or leasehold estate in a unit and common interest; (*propriétaire*)

"plan" means the plan referred to in section 6 and includes any amendments to it; (*plan*)

"property" means the land and interests appurtenant to the land described in the plan or subsequently added to the common elements; (*bien*)

"unit" means a part of the land included in a plan and designated as a unit by the plan, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and plan are registered, and includes a bare land unit. (*partie privative*)

When personal property security interest not included

(2) In this Act, the following words in the paragraph or subsection specified do not include a security interest as defined in the *Personal Property Security Act*:

- (a) "claim" in paragraphs 25(3)(f), 26(1)(b), 26(3)(a), 26(3)(b), 26(6)(a), 26(6)(b) and 28(1)(b) and subsection 28(2);
- (b) "encumbrance" in paragraph 5(1)(f), subsection 5(3), paragraphs 5(4)(a) and (b), subsection 6(6), paragraphs 6(7)(a) and (b), subsections 9(1) to (4) and paragraph 29(1)(c).
S.N.W.T. 1991-92,c.36,s.2; S.N.W.T. 1996,c.9,Sch.H,s.1;
S.N.W.T. 1994,c.8,s.76(2).

Meaning of other expressions

2. (1) Words and expressions used in this Act and not defined in section 1 have the meanings assigned to them under the *Land Titles Act*.

Ownership of space

(2) For the purposes of this Act, the ownership of land includes the ownership of space. S.N.W.T. 1991-92,c.36,s.3.

OBJECTS OF ACT

Objects

3. The objects of this Act are to facilitate the division of property into parts that are to be owned individually, and parts that are to be owned in common, and to provide for the use and management of such properties and to expedite dealings with such properties, and this Act shall be construed in a manner to give the greatest effect to these objects.

DECLARATIONS AND PLANS

Who may register a declaration and plan

4. (1) A declaration and plan may be registered by the holder of

- (a) the fee simple estate in the land described in the plan;

- (b) an estate in fee for a term of years in the land described in the plan;
or
- (c) a leasehold estate in the land described in the plan for a term of more than three years.

Effect of registration

(2) On registration of a declaration and plan, the property described in the plan is governed by this Act and the registrar shall

- (a) issue a certificate of title in the name of the corporation, as provided below, which shall set out that the certificate of title is issued pursuant to this Act;
 - (b) cancel the existing certificate of title for the property and issue a new certificate of title to the registrant for each unit described in the plan together with the proportion of the common interest appurtenant to the unit;
 - (b.1) where the registrant is the holder of a leasehold estate, make a memorandum on the certificate of title of the lessor identifying the corporation as the lessee in place of the registrant;
 - (c) keep an index to be known as the Condominium Corporations Index; and
 - (d) keep a register to be known as the Condominium Register in which declarations, plans, by-laws, notices of termination and other instruments respecting land governed by this Act shall be registered, and the registration recorded.
- S.N.W.T. 1996,c.9,Sch.H,s.2.

Requirements for registration

- 5.** (1) A declaration shall not be registered unless
- (a) title to the land described in the declaration is registered under the *Land Titles Act*;
 - (b) it is executed by the registrant and, where the registrant is the holder of a leasehold estate, by the lessor;
 - (c) it has been approved as to form by the registrar;
 - (d) it contains the legal description of the land that is the subject of the declaration;
 - (e) it contains a statement that the land and interest appurtenant to the land described in the plan is to be governed by this Act;
 - (f) it contains the consent of all persons having registered encumbrances against the land or interests appurtenant to the land described in the plan;
 - (g) it contains a statement expressed in percentages allocated to the units of the proportions in which the owners are to contribute to the common expenses and to share in the common interest;
 - (h) where there are one or more bare land units, it
 - (i) complies with subsection 23(6), and

- (ii) contains a description of the manner of determining values of all units if the property ceases to be governed by this Act; and
- (i) it contains an address for service.

Additional matters that declaration may contain

(2) In addition to the matters mentioned in subsection (1), a declaration may contain

- (a) a specification of common expenses;
- (b) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;
- (c) provisions respecting the occupation and use of the units and common elements, but no such provision shall discriminate because of the race, creed, colour, nationality, ancestry or the place of origin of any person;
- (d) provisions restricting gifts, leases and sales of the units and common interest, but no such provision shall discriminate because of the race, creed, colour, nationality, ancestry or the place of origin of any person;
- (e) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board;
- (f) a specification of the duties of the corporation consistent with its objects;
- (g) a specification of the majority required to make by-laws of the corporation;
- (h) provisions regulating the assessment and collection of contributions towards the common expenses;
- (i) provisions respecting the priority of a lien for unpaid assessment;
- (j) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation;
- (k) a specification of any provision requiring the corporation to purchase the units and common interests of any owners who dissented after a substantial addition, alteration or improvement to, or renovation of, the common elements has been made or after the assets of the corporation have been substantially changed;
- (l) a specification of any allocation of the obligations to repair and to maintain the units and common elements;
- (m) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs under section 24;
- (n) a specification of the majority required for a sale of the property or a part of the common elements;

- (o) a specification of the majority required for the termination of the government of the property under this Act;
- (p) any other matters concerning the property; and
- (q) any or all of the matters mentioned in paragraphs (a) to (p).

Amendment of declaration

(3) All matters contained in a declaration, except the address for service, may be amended only with the written consent of all owners and all persons having registered encumbrances against the units and common interests.

Registration of amendment

(4) Where a declaration is amended, the corporation shall register a copy of the amendment

- (a) executed by all the owners and all persons having registered encumbrances against the units and common interests, or
- (b) accompanied by a certificate under the seal of the corporation certifying that all the owners and all persons having registered encumbrances against the units and common interests have consented in writing to the amendment,

and until the copy is registered, the amendment is ineffective.

S.N.W.T. 1991-92,c.36,s.4; S.N.W.T. 1996,c.9,Sch.H,s.3.

Definitions

6. (1) In this section,

"architect" means a person who is authorized to practise as an architect in a province; (*architecte*)

"engineer" means a person who is qualified to practice professional engineering under the *Engineering and Geoscience Professions Act* (Northwest Territories); (*ingénieur*)

"surveyor" means a Canada Lands Surveyor as defined in the *Canada Lands Surveyors Act*. (*arpenteur*)

S.Nu. 2008,c.2,s.11.

Contents of plan

(2) Subject to subsection (3), a plan shall delineate the perimeter of the horizontal surface of the land, and the perimeter of the buildings in relation to the perimeter of the surface of the land, and must contain

- (a) such structural plans of the buildings as are necessary to identify the boundaries of the units in relation to the buildings;
- (b) a specification of the boundaries of each unit by reference to the buildings;
- (c) diagrams showing the shape and dimensions of each unit and the location of each unit in relation to the other units;

- (d) a certificate of a surveyor certifying that the surveyor was present at and personally superintended the survey represented by the plan, and that the survey and plan are correct;
- (e) a certificate of an architect, or of an engineer qualified to do so, certifying that the buildings have been constructed and that the diagrams of the units shown on the plan are accurate in relation to the buildings; and
- (f) a description of any interest appurtenant to the land that is included in the property.

Bare land unit

(3) The requirement in subsection (2) that a plan shall delineate the perimeter of the buildings in relation to the perimeter of the surface of the land and paragraphs (2)(a), (b) and (e) do not apply to a plan in respect of a bare land unit.

Monuments

(4) The horizontal boundaries of a bare land unit shall be established by monuments.

Approval of plan

(5) A plan or an amending plan shall not be registered unless the plan or amending plan

- (a) has been approved by the Minister responsible for the *Planning Act* or a person designated by the Minister to approve such plans; and
- (b) has been prepared in accordance with the prescribed procedures and meets the prescribed requirements.

Amendment of plan

(6) The plan may be amended only with the written consent of all owners and all persons having registered encumbrances against the units and common interests.

Registration of amendment

(7) Where a plan is amended, the corporation shall register a copy of the amended plan either

- (a) executed by all the owners and all persons having registered encumbrances against the units and common interests, or
- (b) accompanied by a certificate under the seal of the corporation certifying that all the owners and all persons having registered encumbrances against the units and common interest have consented in writing to the amendment,

and until the copy is registered, the amendment is ineffective.

S.N.W.T. 1991-92,c.36,s.5; S.N.W.T. 1998,c.5,s.8; S.N.W.T. 1998,c.38,Sch.E,PartII,s.1.

UNITS AND COMMON INTERESTS

Nature of units and common interests

7. (1) Units and common interests are real property for all purposes and the unit and common interest appurtenant to it may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as any land the title to which is registered under the *Land Titles Act*.

Ownership of units

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

Dangerous activities

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

Right to enter

(4) The corporation, or any person authorized by the corporation, may enter any unit at any reasonable time to carry out the objects and perform the duties of the corporation. S.N.W.T. 1991-92,c.36,s.6.

Ownership

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

Common elements

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

Use of common elements

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

Unit and common elements

(4) Except as provided by this Act, no share in the common elements shall be dealt with except with the consent of the owner, and any instrument dealing with a unit shall operate to deal with the share of the owner in the common elements without express reference to the share of the owner.

Partition and division

(5) The common elements shall not be partitioned or divided except as provided in this Act.

Registration of leasehold condominium

(6) Where a declaration and plan in respect of a leasehold estate are registered,
(a) the corporation is deemed to be the lessee liable to the lessor for the fulfilment of the obligations of the lessee under the terms of the lease;

- (b) the rights and obligations of an owner and the corporation provided in this Act are subject to the terms of the lease; and
 - (c) the registration of the declaration and plan operates as a subdivision of the property as against all persons except the lessor and persons whose interest in the land is derived from the estate or interest of the lessor in the land.
- S.N.W.T. 1996,c.9,Sch.H,s.4.

Encumbrances

9. (1) No encumbrance is enforceable against the common elements after the declaration and plan are registered.

Saving

(2) An encumbrance that, except for subsection (1), would be enforceable against the common elements is enforceable against all the units and common interests.

Discharge

(3) Any unit and common interest may be discharged from an encumbrance by payment to the claimant of a portion of the sum claimed determined by the proportions specified in the declaration for sharing the common expenses.

Discharge on demand

(4) On payment of a portion of the encumbrance sufficient to discharge the encumbrance insofar as it affects a unit and common interest, and on demand, the claimant shall give to the owner of that unit a discharge of the encumbrance insofar as it affects that unit and common interest.

When corporation deemed to be occupier

10. For the purpose of determining liability resulting from breach of duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements.

Easement appurtenant to units

11. (1) The following easements are created and are appurtenant to each unit:

- (a) where a building or any part of a building
 - (i) moves after registration of the declaration and plan, or
 - (ii) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and plan,
 an easement for exclusive use and occupation in accordance with this Act, the declaration and the by-laws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the plan and not at the time of registration;

- (b) an easement for the provision of any service through any installation in the common elements or any other unit;
- (c) an easement for support and shelter by the common elements and any other unit capable of providing support or shelter.

Easements appurtenant to common elements

(2) The following easements are created and are appurtenant to the common elements:

- (a) an easement for the provision of any service through any installation in any unit;
- (b) an easement for support and shelter by any unit capable of providing support and shelter.

Bare land unit

(3) Notwithstanding subsections (1) and (2)

- (a) paragraph (1)(a) does not apply to a bare land unit;
- (b) paragraphs (1)(b) and (2)(a) do not apply to a bare land unit unless the installation was in existence at the time the owner of the bare land unit became the owner of the unit; and
- (c) the easements for shelter provided in paragraphs (1)(c) and (2)(b) do not apply to a bare land unit.

Ancillary rights

(4) All ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of easements implied or created by this Act.

CONDOMINIUM CORPORATIONS

Creation of condominium corporation

12. (1) On registration of a declaration and plan, there is created a corporation without share capital having a name composed of the following components:

- (a) a place or district;
- (b) the words "Condominium Corporation";
- (c) the abbreviation "No." together with a number that is the next available consecutive number in the Condominium Corporation Index.

Members

(2) The members of a corporation are the owners and they shall share the assets of the corporation in the proportions as provided in the declaration.

Business Corporations Act

(3) The *Business Corporations Act* does not apply to a corporation.

Objects of corporation

(4) The objects of a corporation are to manage the property of the owners and any assets of the corporation.

Responsibilities of corporation

(5) A corporation is responsible for the control, management and administration of the common elements and, in the case of a condominium of a leasehold estate, for the fulfilment of the obligations of the lessee under the terms of the lease.

Control of corporation

(6) A corporation shall be regulated in accordance with the declaration and the by-laws.

Records of corporation

(7) A corporation shall keep adequate records and any member of a corporation may inspect records at any reasonable time on reasonable notice.

Change of address

(8) On there being a change of address for service from that set out in the declaration as required by subsection 5(1), the corporation shall immediately register a notice of change of address for service, and the registrar shall amend the declaration accordingly. S.N.W.T. 1996,c.9,Sch.H,s.5; S.N.W.T. 1996,c.19,Sch.,s.2; S.N.W.T. 1998,c.24,s.4.

Real and personal property

13. A corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the owners.

Corporation suing and being sued

14. (1) A corporation shall have a common seal and may sue and be sued, and in particular may bring an action with respect to the common elements and may be sued in respect of any matter connected with the property for which the owners are jointly liable.

Judgment against corporation

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

Effect of termination

15. Where the owners and the property cease to be governed by this Act,

- (a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation; and
- (b) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interest.

BOARD

Board of directors

16. (1) The affairs of a corporation shall be managed by a board of directors whose number, qualification, nomination, election, term of office, compensation and removal from the board shall be as provided in the declaration or the by-laws.

Duties of board

(2) A board shall hold meetings, perform functions, elect officers and carry out duties as provided in the declaration or the by-laws.

Defect in election, qualification of member

(3) The acts of a member of a board or an officer of a board done in good faith are valid notwithstanding any defect that may after that be discovered in his or her election or qualifications.

BY-LAWS

By-laws

17. (1) A corporation, by a vote of members who own 66 2/3%, or such greater percentage as is specified in the declaration, of the common elements, may make or amend by-laws

- (a) governing the management of the property;
- (b) governing the use of units or any of them for purposes of preventing unreasonable interference with the use and enjoyment of the common elements and other units;
- (c) governing the use of the common elements;
- (d) regulating the maintenance of the units and common elements;
- (e) governing the use and management of the assets of the corporation;
- (f) respecting the board;
- (g) specifying duties of the corporation consistent with its objects;
- (h) regulating the assessment and collection of contributions towards the common expenses; and
- (i) respecting the conduct generally of the affairs of the corporation.

Consistency with Act, declaration and lease

(2) The by-laws shall be reasonable and consistent with this Act, the declaration and, in the case of a condominium of a leasehold estate, the lease.

Registration

(3) When a by-law is made, amended or repealed by a corporation, the corporation shall register a copy of the by-law, amendment or repeal together with a certificate executed by the corporation certifying that the by-law, amendment or repeal was made in accordance with this Act, the declaration and the by-laws and until the copy and certificate are registered, the by-law is ineffective.

Prohibition

(4) No by-law or amendment or repeal of a by-law shall be capable of operating to prohibit or restrict the devolution of a unit or any transfer, lease, mortgage or other dealing with a unit, or to destroy or modify any easement implied or created under this Act.

Rules for common elements

(5) The by-laws may provide for the making of reasonable rules by the owners consistent with this Act, the declaration and the by-laws respecting the use of the common elements for the purposes of preventing unreasonable interference with the use and enjoyment of the units and the common elements and the rules shall be complied with and enforced in the same manner as the by-laws. S.N.W.T. 1996,c.9,Sch.H,s.6.

OPERATIONAL ARRANGEMENTS

Compliance by owners

18. (1) Each owner is bound by, and shall comply with, and has a right to the compliance by the other owners with this Act, the declaration and the by-laws and the corporation has a duty to effect this compliance.

Compliance by others

(2) The corporation and each person having an encumbrance against a unit and common interest has a right to the compliance by the owners with this Act, the declaration and the by-laws.

Performance of duty of corporation

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

Common expenses

19. (1) A corporation shall

- (a) establish a fund for the payment of the common expenses to which fund the owners shall contribute in proportions specified in the declaration;
- (b) assess and collect the owners' contributions towards the common expenses as regulated by the declaration and the by-laws;
- (c) pay the common expenses;
- (d) have the right to recover from any owner by an action for debt
 - (i) the unpaid amount of any assessment,
 - (ii) any sum of money expended by it for repairs to or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building comprising the unit of that owner, and

- (iii) any sum of money expended by it for repairs done by it under subsection 23(7) for the owner;
- (d.1) in the case of a condominium of a leasehold estate,
 - (i) have the same rights as the lessor to enforce the terms of the lease against an owner, and
 - (ii) on behalf of the owners, have the same rights as a lessee to enforce the terms of the lease against the lessor;
- (e) have a right of lien for the unpaid amount of any assessment or account that the corporation has the right to recover from the owner under paragraph (d), which right of lien shall, on registration of a notice of lien, be a lien against the unit and common interest of the defaulting owner, and have priority over all encumbrances unless otherwise provided in the declaration;
- (f) have the right to enforce the lien in the same manner as a mortgage is enforced under the *Land Titles Act*; and
- (g) on the application of an owner or a purchaser of a unit and common interest certify
 - (i) the amount of any assessment and accounts owing by the owner to the corporation and for which the corporation has a lien or right of lien against the unit and common interest of the owner,
 - (ii) the manner in which the assessment and accounts are payable, and
 - (iii) the extent to which the assessment and accounts have been paid by the owner,
 and in favour of any person dealing with that owner, the certificate is conclusive proof of the matters certified in it.

Avoidance of expenses

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

Discharge of lien

(3) On payment of the unpaid amount in respect of which a lien has been registered as provided in paragraph (1)(e) and on demand, the corporation shall give a discharge of the lien. S.N.W.T. 1991-92,c.36,s.7; S.N.W.T. 1996,c.9,Sch.H,s.7.

Voting

20. (1) The owners have voting rights in the corporation in the proportions provided in the declaration.

Voting by mortgagee

(2) Where a registered mortgage of a unit and common interest contains a provision that authorizes the mortgagee to exercise the right of the owner to vote or to consent, the mortgagee may exercise the right, if the mortgagee has given written notice

of his or her mortgage to the corporation and the address for service of notices on the mortgagee, and where two or more mortgages contain such a provision, the right to vote or consent shall be exercisable by the mortgagee who has priority.

Voting by minors, etc.

(3) Any powers of voting conferred by this Act, the declaration or the by-laws may be exercised, or any consent required to be given under this Act, the declaration or the by-laws may be given, or any document required to be executed under this Act, the declaration or the by-laws may be executed,

- (a) in the case of an owner who is a minor, by the guardian of his or her estate or, if no guardian has been appointed, by the Public Trustee;
- (b) in case of an owner who is an insane person, by the Public Trustee; or
- (c) in the case of an owner who is incapacitated for any other reason, by the person who for the time being is authorized by law to control his or her property or, if no such person can be found or is willing to act, by the Public Trustee.

Order of court

(4) Where the court, on application of the corporation or of any owner, is satisfied that there is no person capable or willing or reasonably available to exercise the power of voting, giving consent or executing a document, in respect of a unit, the court

- (a) in cases where unanimous vote or unanimous consent is required by this Act, the declaration or the by-laws shall, and
- (b) in any other case, may,

authorize the Public Trustee or some other fit and proper person, to exercise the power of voting, to give the consent or to execute the document, in respect of the unit.

Order of authorization

(5) On giving authorization under subsection (4), the court may make an order that it considers necessary or expedient to give effect to the authorization.

S.Nu. 2010,c.14,s.2.

Substantial alterations

21. (1) The corporation may, by a vote of members who own 66 2/3%, or such greater percentage of the common elements as is specified in the declaration, make any substantial addition, alteration or improvement to or renovation of the common elements, or may make any substantial change in the assets of the corporation, and the corporation may, by a vote of a majority of the members, make any other addition, alteration or improvement to or renovation of the common elements, or make any other change in the assets of the corporation.

Cost

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

Dissenters

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

Arbitration

(4) Where the corporation and the owner who dissented do not agree as to the purchase price of the unit and common interest, the owner who dissented may elect to have the fair market value of his or her unit and common interest determined by arbitration by serving a notice to that effect on the corporation, and the purchase price of his or her unit and common interest shall be the fair market value determined by arbitration.

Arbitration Act

(5) The *Arbitration Act* applies to an arbitration under subsection (4).

Duty to insure

22. (1) The corporation shall insure its liability

- (a) to repair the units and common elements, and
- (b) if specified by the declaration, improvements constructed on or added to a bare land unit after the registration of the declaration and plan,

after damage resulting from fire and such other risks as may be specified by the declaration or by the by-laws, and for this purpose the corporation has an insurable interest in the replacement value of the units, common elements and improvements.

Owner's right to insure

(2) Notwithstanding subsection (1), and any other law relating to insurance, an owner may insure his or her unit in respect of any damage in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of his or her unit.

Payment to mortgagee

(3) Any payment by an insurer under a contract of insurance entered into under subsection (2) shall be made to the mortgagees if the mortgagees, or any of them, so require, in order of their priorities, and the insurer shall then be entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.

Contributions

(4) A contract of insurance issued to a corporation under subsection (1) is not liable to be brought into contribution with any other contract of insurance except another contract issued in respect of the same building under subsection (1).

Relation of owner's insurance

(5) A contract of insurance issued to an owner under the authority of subsection (2) is not liable to be brought into contribution with any other contract of insurance except another contract issued in respect of the same unit under subsection (2).

Other insurance

(6) Subsections (1) and (2) do not restrict the capacity of any person to insure otherwise than as provided in those subsections.

Maintenance of units

23. (1) Each owner shall maintain his or her unit.

Maintenance of common elements

(2) The corporation shall maintain the common elements.

Duty to repair

(3) Subject to section 24, the corporation shall repair the units and common elements after damage.

Obligation to repair and maintain

(4) For the purposes of this Act,

- (a) the obligation to repair and the obligation to maintain are mutually exclusive; and
- (b) the obligation to repair does not include any obligation to repair improvements made to units after registration of the declaration and plan.

Statement of obligations in declaration

(5) Notwithstanding subsections (1) to (3), the declaration may provide that

- (a) each owner shall, subject to section 24, repair his or her unit after damage;
- (b) the owners shall maintain the common elements or any part of the common elements; or
- (c) the corporation shall maintain the units or any part of the units.

Bare land units

(6) Notwithstanding paragraph (4)(b), where there are one or more bare land units, the declaration shall contain provisions respecting the repair of improvements constructed on or added to a bare land unit after the registration of the declaration and plan after such improvements have been damaged.

Permission to repair

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

Consent by owner

(8) An owner shall be deemed to have consented to have repairs done to his or her unit by the corporation under this section.

Determination of damage

24. (1) Where damage to the units and common elements occurs, the board shall determine within 30 days after the occurrence whether there has been substantial damage to the extent that the cost of repair would be 25%, or such greater percentage as is specified by the declaration, of the value of the units, other than bare land units, and common elements immediately before the occurrence.

Vote for repair

(2) Where there has been a determination that there has been substantial damage as provided in subsection (1), and the owners who own 66 2/3% of the units and common elements, or such greater percentage as is specified in the declaration, vote for repairs within 60 days after the determination, the corporation shall repair the damage.

TERMINATION

Notice of termination after substantial damage

25. (1) Where the owners do not vote for repair on a vote under subsection 24(2), the corporation shall register a notice of termination with the registrar within 10 days after the vote.

Vote for repairs

(2) Where there has been no vote within 60 days after the determination that there has been substantial damage under subsection 24(1), the corporation shall register a notice of termination within 10 days after the expiration of the 60-day period.

Effect of registration of notice

- (3) On the registration of a notice of termination under subsection (1) or (2),
- (a) the government of the property by this Act is terminated;
 - (b) except where the plan defines one or more bare land units, the owners are tenants in common of the land and interests appurtenant to the land described in the plan in the same proportions as their common interests;
 - (c) where the plan defines one or more bare land units, the owners are tenants in common of the land described in the plan and any interests appurtenant to the land in proportion to the value of each unit and the appurtenant common interest determined in accordance with the manner described in the declaration for determining value in the event that the property ceases to be governed by this Act;

- (d) claims against the land and the interests appurtenant to the land described in the plan created before the registration of the declaration and plan are as effective as if the declaration and plan had not been registered;
 - (e) encumbrances against each unit and common interest created after the registration of the declaration and plan are claims against the interest of the owner in the land and interests appurtenant to the land described in the plan, and have the same priority they had before the registration of the notice of termination; and
 - (f) all claims against the property created after the registration of the declaration and plan, other than the encumbrance mentioned in paragraph (e), are extinguished.
- S.Nu. 2010,c.14,s.2.

Termination by sale

- 26.** (1) Sale of the property or any part of the common elements may be authorized
- (a) by a vote of owners who own 66 2/3%, or such greater percentage as is specified in the declaration, of the common elements; and
 - (b) by the consent of the persons having registered claims against the property or the parts of the common elements, as the case may be, created after the registration of the declaration and plan.

Execution of documents

- (2) Where a sale of the property or any part of the common elements is authorized under subsection (1), the corporation shall
- (a) register a notice of termination that describes the property or the part of the common elements being sold and affects only such property; and
 - (b) transfer the property or the part of the common elements being sold.

Notice of termination

- (3) The notice of termination and the transfer referred to in subsection (2) shall
- (a) be executed by all the owners and all the persons having registered claims against the property or the part of the common elements being sold; or
 - (b) be executed by the corporation and be accompanied by a certificate under the seal of the corporation certifying that the required percentage of owners as stipulated in this Act or the declaration have voted in favour of the sale, and that all persons having registered claims against the property or the part of the common elements being sold have consented in writing to the sale.

Conclusiveness

(4) A certificate made under paragraph (3)(b) is conclusive proof of the facts stated in it

- (a) in favour of a purchaser of the parcel; and
- (b) in favour of the registrar.

Effect of registration

(5) On registration of the transfer, the registrar shall

- (a) endorse on the certificate of title in the name of the corporation a memorial that the property or a part of the common elements, as the case may be, is no longer governed by this Act;
- (b) in the case of a transfer of all the property, cancel the certificates of title of each unit, and where necessary, dispense with the production of the duplicate certificate of title without complying with section 50 of the *Land Titles Act*; and
- (c) in the case of a transfer of part of the common elements, cancel the certificate of title for that part of the common elements being transferred.

Effect of registration on claims

(6) On registration of the transfer

- (a) registered claims against the land and interests appurtenant to the land created before the registration of the declaration and plan are as effective in respect of the property transferred as if the declaration and plan had not been registered;
- (b) security interests in the property or part of the common elements that were, after the registration of the declaration and plan, created and registered under section 49 of the *Personal Property Security Act* are as effective in respect of the property transferred as if the property were not transferred; and
- (c) registered claims against the property or the part of the common elements created after the registration of the declaration and plan, other than those referred to in paragraph (b), are extinguished in respect of the property transferred and the Registrar shall issue the certificate of title in respect of the property transferred clear of such registered claims.

Proceeds

(7) Subject to subsections 27(1) to (3), the owners share the proceeds of the sale in the same proportions as their common interest. S.N.W.T. 1991-92,c.36,s.8; S.N.W.T. 1994,c.8,s.76(3).

Right of dissenters

27. (1) Where a sale is made under section 26, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by arbitration by serving notice to that effect on the corporation within 10 days after the vote.

Arbitration Act

(2) The *Arbitration Act* applies to an arbitration under subsection (1).

Proceeds

(3) The owner who served the notice referred to in subsection (1) is entitled to receive from the proceeds of the sale the amount he or she would have received if the sale price had been the fair market value as determined by arbitration under subsection (1).

Where proceeds inadequate

(4) Where the proceeds of the sale are inadequate to pay the amount determined under subsection (1), each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests.

Termination by notice without sale

28. (1) Termination of the government of the property under this Act may be authorized

- (a) by a vote of the owners who own 66 2/3%, or such greater percentage as is specified in the declaration, of the common elements; and
- (b) by the consent of the persons having registered claims against the property created after the registration of the declaration and plan.

Notice of termination

(2) Where termination of the government of the property under this Act is authorized under subsection (1), the corporation shall register a notice of termination that shall

- (a) be executed by all the owners and all the persons having registered claims against the property created after the registration of the declaration and plan; or
- (b) be executed by the corporation and accompanied by a certificate under the seal of the corporation certifying that the required percentage of owners as stipulated in this Act or the declaration have voted in favour of the termination of the government of the property, and all the persons having registered claims against the property created after the registration of the declaration have consented in writing to the termination of the government of the property.

Effect of registration

(3) On registration of a notice of termination under subsection (2), the provisions of subsection 25(3) apply.

Application to court

29. (1) Where

- (a) damage to units and common elements occurs,
- (b) all or part of the property is expropriated, or

- (c) the corporation or any owner, or any person having an encumbrance against a unit and common interest considers it advisable,

any interested party may apply to the court for an order terminating the government of the property under this Act or amending the declaration or the plan.

Considerations

(2) In determining whether to terminate the government of the property under this Act or to amend the declaration or the plan, the court shall consider

- (a) the scheme and intent of this Act;
- (b) the rights and interests of the owners individually and as a whole;
- (c) what course of action would be most just and equitable; and
- (d) the probability of confusion and uncertainty in the affairs of the corporation or the owners that might result from that order.

Order

(3) Where an order is made under subsection (1), the court may include in the order any provisions that the court considers appropriate in the circumstances including, without limiting the generality of this power, directions

- (a) for the payment of money by the corporation or by the owners or by one or more of them;
- (b) to adjust the effect of the order as between the corporation and the owners and as among the owners themselves;
- (c) for the application of insurance moneys or proceeds of the expropriation of common elements; or
- (d) for the transfer of the interests of owners of units that have been wholly or partially damaged or expropriated to the other owners.

Appearance by insurer

(4) On any application to the court under this section, any insurer who has insured the units and the common elements under subsection 22(1) may appear in person or by agent or counsel.

Variation

(5) The court may vary or amend any order made by it under this section.
S.Nu. 2010,c.14,s.2.

PERFORMANCE OF DUTIES

Application respecting performance of duty

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

Performance of duty

(2) The court may by order direct performance of the duty referred to in subsection (1) and may include in the order any provisions that the court considers appropriate in the circumstances including the appointment of an administrator for the time and on the terms and conditions that it considers necessary and the payment of costs.

Administrator

(3) An administrator appointed under subsection (2) shall

- (a) to the exclusion of the corporation, have such of the powers and duties of the corporation as the court orders;
- (b) have the right to delegate any of the powers so vested in the administrator; and
- (c) be paid for his or her services by the corporation, which payments are common expenses.

Saving provision

(4) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act.

REGULATIONS

Regulations

31. For the purpose of carrying out the provisions of this Act, the Commissioner, on the recommendation of the Minister, may make regulations not inconsistent with any other provision of this Act

- (a) prescribing forms for use under this Act;
 - (b) prescribing rules to cover cases for which no provision is made under this Act; and
 - (c) respecting the procedures for the preparation of and the requirements for plans submitted for registration under this Act.
- S.N.W.T. 1991-92,c.36,s.9.