

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF Section 101 of the
Courts of Justice Act and Section 243 of the *Bankruptcy and Insolvency Act*

BETWEEN:

**TREZ CAPITAL LIMITED PARTNERSHIP and COMPUTERSHARE
TRUST COMPANY OF CANADA**

Applicants

- and -

WYNFORD PROFESSIONAL CENTRE LTD. and GLOBAL MILLS INC.

Respondents

**BRIEF OF AUTHORITIES OF THE APPLICANTS, TREZ CAPITAL LIMITED
PARTNERSHIP and COMPUTERSHARE TRUST COMPANY OF CANADA**

April 24, 2015

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TAB 1

Land Titles Act

R.S.O. 1990, CHAPTER L.5

Consolidation Period: From June 20, 2012 to the e-Laws currency date.

Last amendment: 2012, c. 8, Sched. 28.

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DEATH OF REGISTERED OWNER

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PART I
PRELIMINARY

Definitions

1. In this Act,

“court”, except if the context otherwise requires, means the Superior Court of Justice; (“tribunal”)

Note: On a day to be named by proclamation of the Lieutenant Governor, section 1 is amended by adding the following definition:

"Director" means the Director of Titles appointed under subsection 9 (1); ("directeur")

See: 2012, c. 8, Sched. 28, ss. 1 (1), 98.

"facsimile" means an accurate reproduction of a book, document or record and includes a print from microfilm and a printed copy generated by or produced from a computer record; ("fac-similé")

"fraudulent instrument" means an instrument,

- (a) under which a fraudulent person purports to receive or transfer an estate or interest in land,
- (b) that is given under the purported authority of a power of attorney that is forged,
- (c) that is a transfer of a charge where the charge is given by a fraudulent person, or
- (d) that perpetrates a fraud as prescribed with respect to the estate or interest in land affected by the instrument; ("acte frauduleux")

"fraudulent person" means a person who executes or purports to execute an instrument if,

- (a) the person forged the instrument,
- (b) the person is a fictitious person, or
- (c) the person holds oneself out in the instrument to be, but knows that the person is not, the registered owner of the estate or interest in land affected by the instrument; ("fraudeur")

"land" means land, tenements, hereditaments and appurtenances and any interest therein; ("bien-fonds")

"land registrar" means a land registrar appointed under the *Registry Act*, in whose land titles division land affected or intended to be affected by any proceeding, instrument, application or plan is or may be registered or deposited; ("registrateur")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "land registrar" is repealed. See: 2012, c. 8, Sched. 28, ss. 1 (2), 98.

"lot" includes a block, reserve and any other delineation of land on a plan; ("lot")

"Minister" means the Minister of Consumer and Business Services; ("ministre")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "Minister" is repealed and the following substituted:

"Minister" means the Minister of Government Services or whatever other member of the Executive Council to whom administration for this Act is assigned under the *Executive Council Act*; ("ministre")

See: 2012, c. 8, Sched. 28, ss. 1 (3), 98.

"owner" means an owner in fee simple; ("propriétaire")

"plan" means a plan that is drawn in accordance with the regulations; ("plan")

"prescribed" means prescribed by this Act or by the regulations; ("prescrit")

"property" means land designated as a property under subsection 141 (2) or (4); ("unité foncière")

"registered" means registered under this Act; ("enregistré")

"regulations" means the regulations made under this Act and paragraph 7 of subsection 102 (1) or section 103 of the *Registry Act*. ("règlements") R.S.O. 1990, c. L.5, s. 1; 1998, c. 18, Sched. E, s. 102; 2000, c. 26, Sched. B, s. 12 (1); 2001, c. 9, Sched. D, s. 13; 2006, c. 34, s. 15 (1).

Administration of Act

2. The Minister is responsible for the administration of this Act. R.S.O. 1990, c. L.5, s. 2.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 2 is repealed. See: 2012, c. 8, Sched. 28, ss. 2, 98.

PART II ORGANIZATION AND ADMINISTRATION

APPLICATION OF ACT

Application of Act

3. (1) This Act applies to such parts of Ontario as are designated by regulation. R.S.O. 1990, c. L.5, s. 3 (1).

Regulations

(2) The Minister may by regulation,

(a) designate the parts of Ontario to which this Act applies;

(b) describe the land titles divisions; and

(c) provide for the location of offices for the land titles system. R.S.O. 1990, c. L.5, s. 3 (2); 1998, c. 18, Sched. E, s. 103.

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is repealed and the following substituted:

(c) make any change in the boundaries of the land titles divisions.

See: 2012, c. 8, Sched. 28, ss. 3 (1), 98.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 3 is amended by adding the following subsection:

Same

(3) No alteration in the boundaries of any riding, electoral district or municipality alters or affects the boundaries of any land titles division. 2012, c. 8, Sched. 28, s. 3 (2).

See: 2012, c. 8, Sched. 28, ss. 3 (2), 98.

Changes in land titles divisions

4. (1) The Minister may by regulation,

(a) combine two land titles divisions into one land titles division;

(b) divide a land titles division into two or more land titles divisions;

(c) annex a part of a land titles division to an adjoining land titles division;

(d) designate the names by which land titles divisions shall be known;

(e) provide for the transfer of records and documents relating to land in a land titles division that is combined, divided or in part annexed by a regulation under clause (a), (b) or (c). R.S.O. 1990, c. L.5, s. 4 (1); 1998, c. 18, Sched. E, s. 104.

Idem

(2) No alteration in the boundaries of any riding, electoral district or municipality alters or affects the boundaries of any land titles division. R.S.O. 1990, c. L.5, s. 4 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 4 is repealed. See: 2012, c. 8, Sched. 28, ss. 4, 98.

Representatives

5. A land registrar appointed for a land titles division may appoint as his or her representative one or more public servants employed under Part III of the *Public Service of Ontario Act, 2006*, and the land registrar may delegate to his or her representative the powers, duties and functions under this Act that the land registrar specifies. 2006, c. 35, Sched. C, s. 58 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 5 is repealed. See: 2012, c. 8, Sched. 28, ss. 4, 98.

Land registry offices

6. (1) Every land titles office, including every combined registry office and land titles office, shall be known as a land registry office. R.S.O. 1990, c. L.5, s. 6 (1).

Land titles system

(2) The system of registration under this Act shall be known as the land titles system. R.S.O. 1990, c. L.5, s. 6 (2).

Fee and receiving record

7. Upon receiving an instrument for registration or deposit, the land registrar shall record it and the fee charged in a manner approved by the Director of Land Registration. R.S.O. 1990, c. L.5, s. 7.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 7 is repealed and the following substituted:

Recording instruments

7. Upon receiving an instrument for registration or deposit, it shall be recorded in the manner approved by the Director. 2012, c. 8, Sched. 28, s. 5.

See: 2012, c. 8, Sched. 28, ss. 5, 98.

OFFICERS, ETC.

Duties of Director of Land Registration

8. The Director of Land Registration appointed under the *Registry Act* has general supervision and control over land registry offices for land titles divisions and the system for registration therein and, subject to this Act and the regulations, has similar powers and duties as he or she has under section 97 of the *Registry Act*, and such other duties as he or she is required to perform by the Minister. R.S.O. 1990, c. L.5, s. 8; 1998, c. 18, Sched. E, s. 106.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 8 is repealed. See: 2012, c. 8, Sched. 28, ss. 5, 98.

Director of Titles

9. (1) The Deputy Minister may appoint a public servant employed under Part III of the *Public Service of Ontario Act, 2006* who is a barrister and solicitor to be the Director of Titles. 1998, c. 18, Sched. E, s. 107; 2000, c. 26, Sched. B, s. 12 (2); 2006, c. 35, Sched. C, s. 58 (2).

Note: Despite the amendment to subsection (1) by subsection 12 (2) of Schedule B of the *Red Tape Reduction Act, 2000*, the Director of Titles in office immediately before December 6, 2000 shall continue in office until the Deputy Minister appoints a successor. See: 2000, c. 26, Sched. B, s. 12 (3).

Representatives

(2) The Director of Titles may appoint as his or her representative one or more public servants employed under Part III of the *Public Service of Ontario Act, 2006*, and the Director may delegate to a representative the powers, duties and functions under this or any other Act that the Director specifies. 2006, c. 35, Sched. C, s. 58 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Duties

(2) The Director has general supervision and control over the land titles system and shall perform all other duties that the Minister requires. 2012, c. 8, Sched. 28, s. 6.

Representative

(3) The Director may appoint any person as his or her representative and may delegate in writing any or all of the Director's powers and duties under this or any other Act to a representative, subject to the restrictions set out in the delegation. 2012, c. 8, Sched. 28, s. 6.

See: 2012, c. 8, Sched. 28, ss. 6, 98.

Director of Titles: authority, hearings

Authority of Director of Titles

10. (1) The Director of Titles has the authority to determine any matter relating to titles of land to which this Act applies. R.S.O. 1990, c. L.5, s. 10 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 7 (1), 98.

(2) REPEALED: 1998, c. 18, Sched. E, s. 108 (1).

Hearing before Director

(3) If under this Act the land registrar is authorized to determine any matter, the Director of Titles may determine the matter at a hearing. 2009, c. 33, Sched. 17, s. 5 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Hearing before Director

(3) Before determining any matter under subsection (1), the Director may hold a hearing. 2012, c. 8, Sched. 28, s. 7 (2).

See: 2012, c. 8, Sched. 28, ss. 7 (2), 98.

Place for hearing

(4) A hearing held under this Act may be held at the local land registry office, the office of the Director of Titles or some other location in Ontario that the hearing officer chooses, having regard to the circumstances of the case. 1998, c. 18, Sched. E, s. 108 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 7 (3), 98.

Notices of hearing

(5) The Director of Titles shall serve or cause to be served notices of a hearing to be held by the Director of Titles under this Act and may direct a land registrar to serve any notice of a hearing required to be served under this Act and the land registrar shall comply with the direction. 2009, c. 33, Sched. 17, s. 5 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed and the following substituted:

Notices of hearing

(5) The Director shall serve or cause to be served notices of a hearing to be held by the Director under this Act. 2012, c. 8, Sched. 28, s. 7 (4).

See: 2012, c. 8, Sched. 28, ss. 7 (4), 98.

Registration of order of Director

(6) Any order of the Director of Titles shall, upon his or her request, be registered, without fee, by the land registrar, who shall make such entries in or amendments to the register of the title of the land affected by the order as may be required by the Director in the order. R.S.O. 1990, c. L.5, s. 10 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is repealed and the following substituted:

Registration of order of Director

(6) At the request of the Director, any order of the Director shall be registered without fee and all entries and amendments required by the order shall be made in the register of the title of the land affected by the order. 2012, c. 8, Sched. 28, s. 7 (4).

See: 2012, c. 8, Sched. 28, ss. 7 (4), 98.

First registration

(7) The Director of Land Registration and the Director of Titles shall perform such functions relating to the first registration of land under this Act as are required. R.S.O. 1990, c. L.5, s. 10 (7); 1998, c. 18, Sched. E, s. 108 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is repealed and the following substituted:

First registration

(7) The Director shall perform all functions relating to the first registration of land under this Act that are required. 2012, c. 8, Sched. 28, s. 7 (4).

See: 2012, c. 8, Sched. 28, ss. 7 (4), 98.

Transfer of functions to Director of Land Registration

11. (1) The Minister may make regulations transferring to the Director of Land Registration any function of the Director of Titles that is essentially of an administrative nature under any Act. R.S.O. 1990, c. L.5, s. 11 (1).

Where transfer not exclusive

(2) A transfer of a function in a regulation made under subsection (1) may, where it expressly so states, retain to the Director of Titles concurrent authority to perform the function transferred. R.S.O. 1990, c. L.5, s. 11 (2).

Statutory references

(3) A regulation made under subsection (1) shall identify each function to be transferred by citing the relevant statutory provision. R.S.O. 1990, c. L.5, s. 11 (3).

Deemed amendments

(4) Where a function has been transferred, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though "Director of Land Registration" had been substituted for "Director of Titles". R.S.O. 1990, c. L.5, s. 11 (4).

Idem

(5) Where a function has been transferred and subsection (2) applies, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though "Director of Land Registration and Director of Titles" had been substituted for "Director of Titles". R.S.O. 1990, c. L.5, s. 11 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 11 is repealed. See: 2012, c. 8, Sched. 28, ss. 8, 98.

Disputes as to fees

12. (1) Where a dispute arises in regard to any question of fees under this Act, the land registrar shall forthwith submit the dispute to the Director of Land Registration, and shall thereupon notify the person interested or the person's agent of such submission, and the decision of the Director of Land Registration upon the question submitted is final, unless appealed from and varied upon appeal as hereinafter mentioned. R.S.O. 1990, c. L.5, s. 12 (1).

Reduction of fees

(2) Where, in the opinion of the Director of Land Registration, a fee payable under this Act is unduly excessive, having regard to all the circumstances, the Director of Land Registration may reduce the fee to such amount as he or she considers appropriate. R.S.O. 1990, c. L.5, s. 12 (2).

Decisions of Director of Land Registration

(3) All decisions given by the Director of Land Registration shall be in writing and the appeal therefrom shall be to the Divisional Court in accordance with the rules of court. R.S.O. 1990, c. L.5, s. 12 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 12 is repealed and the following substituted:

Disputes as to fees

12. (1) If a dispute arises in regard to any question of fees under this Act,
- (a) the dispute shall be submitted to the Director;
 - (b) notice of the submission shall be sent to the person interested or the person's agent; and
 - (c) the decision of the Director on the question submitted is final, unless appealed from and varied upon appeal. 2012, c. 8, Sched. 28, s. 9.

Reduction of fees

(2) If, in the opinion of the Director, a fee payable under this Act is unduly excessive, having regard to all the circumstances, the Director may reduce the fee to the amount that the Director considers appropriate. 2012, c. 8, Sched. 28, s. 9.

Decisions and appeal

(3) All decisions given by the Director under this section shall be in writing and may be appealed to the Divisional Court in accordance with the rules of court. 2012, c. 8, Sched. 28, s. 9.

See: 2012, c. 8, Sched. 28, ss. 9, 98.

13. REPEALED: 1998, c. 18, Sched. E, s. 109.

Examiner of surveys

14. (1) There shall be an examiner of surveys whom the Deputy Minister shall appoint. 2000, c. 26, Sched. B, s. 12 (4).

Note: Despite the re-enactment of subsection (1) by subsection 12 (4) of Schedule B to the *Red Tape Reduction Act, 2000*, the examiner of surveys in office immediately before December 6, 2000 shall continue in office until the Deputy Minister appoints a successor. See: 2000, c. 26, Sched. B, s. 12 (5).

Qualifications

(2) A person shall not be appointed as examiner of surveys unless he or she is an Ontario land surveyor of not less than five years standing. R.S.O. 1990, c. L.5, s. 14 (2).

Duties

(3) The examiner of surveys shall work under the direction of the Director of Titles and shall perform the duties under this Act, the *Boundaries Act*, the *Condominium Act, 1998* and the *Registry Act* that are required by the Director of Titles or otherwise required. 2009, c. 33, Sched. 17, s. 5 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "of Titles" wherever that expression appears. See: 2012, c. 8, Sched. 28, ss. 10, 98.

Assistant examiners of surveys

(4) The examiner of surveys may appoint one or more persons to be assistant examiners of surveys. R.S.O. 1990, c. L.5, s. 14 (4).

Duties

(5) An assistant examiner of surveys shall perform such duties of the examiner of surveys under this or any other Act as are required by the examiner of surveys. R.S.O. 1990, c. L.5, s. 14 (5).

Representatives for boundaries

15. The Director of Titles may appoint one or more persons, each of whom is an Ontario land surveyor, to be a representative for the purposes of,

Note: On a day to be named by proclamation of the Lieutenant Governor, section 15 is amended by striking out "of Titles" in the portion before clause (a). See: 2012, c. 8, Sched. 28, ss. 10, 98.

(a) exercising the powers and performing the duties of the Director of Titles under the *Boundaries Act*; or

Note: On a day to be named by proclamation of the Lieutenant Governor, the English version of clause (a) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 10, 98.

(b) making an order under section 110 of the *Condominium Act, 1998* to amend a declaration or description under that Act. 2004, c. 19, s. 13 (1).

Protection of officers, etc.

16. (1) No officer appointed under this Act and no person acting under his or her authority or under an order of a court or a rule is liable to any action, suit or proceeding for or in respect of an act or matter in good faith done or omitted to be done in the exercise or supposed exercise of the powers conferred by this Act or of any such order or rule. R.S.O. 1990, c. L.5, s. 16 (1).

Liability of Crown

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person referred to in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in like manner as if subsection (1) had not been enacted. R.S.O. 1990, c. L.5, s. 16 (2).

17. REPEALED: 1998, c. 18, Sched. E, s. 112.

Office hours

18. (1) Every land registry office shall be kept open, for the hours that the Director of Land Registration by order specifies, on every day except,

(a) Saturday;

(b) Sunday;

(c) a day that is determined by directive of the Management Board of Cabinet under subsection 33 (4) of the *Public Service of Ontario Act, 2006* to be a holiday; and

(d) a day that the Director by order specifies. 1998, c. 18, Sched. E, s. 113; 2006, c. 35, Sched. C, s. 58 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Time for registration of instruments

(1) The Director may by order specify the days and hours during which instruments may be received for registration; no instruments may be received for registration outside those days and hours except if,

(a) the Director by order specifies that instruments may be received for registration outside those days and hours; and

(b) the registrations are made in accordance with the conditions, if any, set out in the Director's order mentioned in clause (a). 2012, c. 8, Sched. 28, s. 11 (1).

See: 2012, c. 8, Sched. 28, ss. 11 (1), 98.

Extension of time

(2) For the purposes of subsection 89 (2) of Part VI (Interpretation) of the *Legislation Act, 2006*, a day described in clause (1) (a), (b), (c) or (d) is a day when the land registry office is not open during its regular hours of business. 2006, c. 21, Sched. F, s. 116.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed. See: 2012, c. 8, Sched. 28, ss. 11 (1), 98.

Registration of instruments

(3) The Director of Land Registration may by order specify the hours during which instruments may be received for registration; no instruments may be received for registration outside those hours except if,

(a) the Director by order specifies that instruments may be received for registration outside those hours; and

(b) the registrations are made in accordance with the conditions, if any, set out in the Director's order mentioned in clause (a). 1998, c. 18, Sched. E, s. 113.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed. See: 2012, c. 8, Sched. 28, ss. 11 (1), 98.

Different hours

(4) The hours that the Director of Land Registration specifies under subsection (3) for receiving instruments for registration may be different from the hours that the Director specifies under subsection (1) for the opening of a land registry office. 1998, c. 18, Sched. E, s. 113.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed. See: 2012, c. 8, Sched. 28, ss. 11 (1), 98.

Services when no registrations

(5) The Director of Land Registration may by order specify the services to be provided at land registry offices before or after the hours within which instruments are received for registration. 1998, c. 18, Sched. E, s. 113.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed. See: 2012, c. 8, Sched. 28, ss. 11 (1), 98.

Scope of orders

(6) An order that the Director of Land Registration makes under this section may be limited to one or more land registry offices for one or more land titles divisions. 1998, c. 18, Sched. E, s. 113.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is amended by striking out "of Land Registration". See: 2012, c. 8, Sched. 28, ss. 11 (2), 98.

Not regulations

(7) An order that the Director of Land Registration makes under this section is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1998, c. 18, Sched. E, s. 113; 2006, c. 21, Sched. F, s. 136 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is amended by striking out "of Land Registration". See: 2012, c. 8, Sched. 28, ss. 11 (2), 98.

AUTHORITY OF OFFICERS

Examination of witnesses

19. The Director of Titles may name the witnesses to be examined at a hearing under this Act or may request an official examiner of the court to take the examination of all witnesses produced by any named person or of any class of witnesses. 2009, c. 33, Sched. 17, s. 5 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 19 is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 12, 98.

Powers re witnesses, production of documents, etc.

20. (1) The Director of Titles, by summons, may require the attendance of all such persons as he or she thinks fit in an application made to him or her and may in the summons require any person to produce for inspection any document, deed, instrument or evidence of title to the production of which the applicant or a trustee for the applicant is entitled. R.S.O. 1990, c. L.5, s. 20 (1); 1998, c. 18, Sched. E, s. 114; 2009, c. 33, Sched. 17, s. 5 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 13 (1), 98.

To require production of plans, books, etc.

(2) He or she may also, by a like summons, require any person having the custody of any map, plan or book made or kept in pursuance of any statute to produce such map, plan or book for his or her inspection. R.S.O. 1990, c. L.5, s. 20 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "He or she" and substituting "The Director". See: 2012, c. 8, Sched. 28, ss. 13 (2), 98.

Examination on oath

(3) He or she may examine upon oath any person appearing before him or her, and may allow to every person summoned by him or her reasonable charges for the person's attendance. R.S.O. 1990, c. L.5, s. 20 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "He or she" and substituting "The Director". See: 2012, c. 8, Sched. 28, ss. 13 (2), 98.

Charges, etc.

(4) Any charges allowed by the Director of Titles under this section shall be deemed to be charges incurred in connection with the registration of land and may be dealt with accordingly. R.S.O. 1990, c. L.5, s. 20 (4); 2009, c. 33, Sched. 17, s. 5 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 13 (3), 98.

Disobedience

(5) If any person disobeys an order or summons of the Director of Titles made under this Act, the Director of Titles may certify the disobedience to the court and the court may then punish the person in the same manner as if the order or summons were an order of the court. 2009, c. 33, Sched. 17, s. 5 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "of Titles" wherever that expression appears. See: 2012, c. 8, Sched. 28, ss. 13 (3), 98.

(6) REPEALED: 2009, c. 33, Sched. 17, s. 5 (7).

Tender of conduct money and fees

(7) No person shall be required to attend in obedience to a summons or to produce documents unless the fees and allowances for the person's attendance in accordance with the tariff of the court are paid or tendered to the person. R.S.O. 1990, c. L.5, s. 20 (7).

Director of Titles or land registrar may state a case for opinion of Divisional Court, or direct issue

21. (1) Where upon the examination of a title or upon an application with respect to registered land the Director of Titles or the land registrar entertains a doubt as to any matter of law, he or she may state a case for the opinion of the Divisional Court and may name the parties to it, and where he or she entertains a doubt as to any matter of fact, may direct an issue to be tried for the purpose of determining such fact. R.S.O. 1990, c. L.5, s. 21 (1).

Exercise of powers

(2) The powers conferred by this section shall not be exercised by a land registrar except with the approval of the Director of Titles. R.S.O. 1990, c. L.5, s. 21 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 21 is repealed and the following substituted:

Director's powers in case of doubt

21. (1) If, upon the examination of a title or upon an application with respect to registered land, the Director entertains a doubt as to any matter of law, he or she may state a case for the opinion of the Divisional Court and may name the parties to it. 2012, c. 8, Sched. 28, s. 14.

Same, matter of fact

(2) If, upon the examination of a title or upon an application with respect to registered land, the Director entertains a doubt as to any matter of fact, he or she may direct an issue to be tried for the purpose of determining the matter. 2012, c. 8, Sched. 28, s. 14.

See: 2012, c. 8, Sched. 28, ss. 14, 98.

Administration of oaths

22. The land registrar, or any representative in his or her office authorized by the land registrar in writing, or any person authorized for a like purpose under the *Registry Act*, may administer an oath for any of the purposes of this Act. R.S.O. 1990, c. L.5, s. 22; 1998, c. 18, Sched. E, s. 115.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 22 is repealed and the following substituted:

Administration of oaths

22. The Director and any representative whom the Director specifies may administer an oath for any purpose of this Act. 2012, c. 8, Sched. 28, s. 14.

See: 2012, c. 8, Sched. 28, ss. 14, 98.

Inhibiting of registered dealings

23. (1) The court, the Director of Titles or the land registrar, upon the application of any person interested made in the prescribed manner in relation to any registered land or charge, after directing such inquiries, if any, to be made and notices given and after hearing such persons as the court, the Director of Titles or the land registrar considers necessary or expedient, may issue an order or make an entry inhibiting for a time or until the occurrence of an event to be named in such order or

entry or generally until further order or entry any dealing with registered land or with a registered charge. R.S.O. 1990, c. L.5, s. 23 (1).

(2) REPEALED: 1998, c. 18, Sched. E, s. 116.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 23 is repealed and the following substituted:

Inhibiting of registered dealings

23. (1) Upon the application of any person interested in relation to any registered land or charge, the court or the Director may issue an order inhibiting any dealing with the registered land or charge after,

- (a) directing that all inquiries, if any, be made and all notices be given as the court or the Director, as the case may be, considers necessary or expedient; and
- (b) hearing the persons that the court or the Director, as the case may be, considers necessary or expedient. 2012, c. 8, Sched. 28, s. 14.

Manner of application

(2) The application shall be made in the manner required by the court or the Director, as the case may be. 2012, c. 8, Sched. 28, s. 14.

Duration of inhibition

(3) The order may inhibit the dealing for a time or until the occurrence of an event named in the order or generally until further order. 2012, c. 8, Sched. 28, s. 14.

Registration of order

(4) The order shall be registered on title to the land affected by the order. 2012, c. 8, Sched. 28, s. 14.

Not regulations

(5) An order that the Director makes under this section is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 2012, c. 8, Sched. 28, s. 14.

See: 2012, c. 8, Sched. 28, ss. 14, 98.

PART III JURISDICTION OF THE COURT

Exercise of jurisdiction

24. (1) Any jurisdiction of the court under this Act, other than an appeal to which section 19 of the *Courts of Justice Act* applies, may be exercised by a judge of the court. R.S.O. 1990, c. L.5, s. 24 (1).

Costs

(2) The court, on any application or in any other matter or proceeding coming before it under this Act, has the like authority in respect of costs as it has in any ordinary proceeding within its jurisdiction. R.S.O. 1990, c. L.5, s. 24 (2).

Court order to be obeyed

25. (1) Officers appointed under this Act shall obey the order of any competent court in relation to registered land on being served with the order or a certified copy thereof. R.S.O. 1990, c. L.5, s. 25 (1).

Registration under vesting order

(2) Where under an order of the court freehold or leasehold land or a charge is vested in any person, the land registrar shall, on due proof of the order, make such entries in the register as are necessary to give effect thereto, but, if any person whose estate is affected by the order is not shown by the order to be a party to the cause or matter in which the order was made, the applicant shall furnish such evidence as is requisite to show that the person is bound thereby. R.S.O. 1990, c. L.5, s. 25 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 15, 98.

Appeal to court

26. A party to a hearing held under this Act may appeal the decision or order of the Director of Land Registration or the Director of Titles to the court within 30 days of the date of the decision or order, as the case may be, and the appeal shall be by way of a new trial. 2009, c. 33, Sched. 17, s. 5 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 26 is amended by striking out "the Director of Land Registration or the Director of Titles" and substituting "the Director". See: 2012, c. 8, Sched. 28, ss. 16, 98.

Further appeal

27. Any person affected by an order made under this Act by a judge of the court may appeal to the Divisional Court within 30 days of the date of the decision and, subject to the rules, in like manner as in the case of other appeals to that court. R.S.O. 1990, c. L.5, s. 27; 1998, c. 18, Sched. E, s. 118.

If incapable persons interested

28. (1) If a minor, person who is incapable as defined in the *Substitute Decisions Act, 1992*, whether or not the person has a guardian, person absent from Canada or person yet unborn is interested in land in respect of the title to which a question arises, any person interested in the land may apply to the Divisional Court for a direction that the opinion of the court in the case stated to it under this Act shall be conclusively binding on the minor, person who is incapable, person absent from Canada or unborn person. 2006, c. 19, Sched. G, s. 3 (1); 2009, c. 33, Sched. 2, s. 41 (1, 2).

Powers of Divisional Court on stated case

(2) The Divisional Court shall hear the allegations of all parties appearing before it and may disapprove altogether or may approve, either with or without modification, of the directions of the Director of Titles or of the land registrar in respect of any case stated as to the title of land. R.S.O. 1990, c. L.5, s. 28 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "the Director of Titles or of the land registrar" and substituting "the Director". See: 2012, c. 8, Sched. 28, ss. 17, 98.

Power to appoint guardian

(3) The Divisional Court may also, if necessary, appoint a guardian or other person to appear on behalf of a minor, person who is incapable as defined in the *Substitute Decisions Act, 1992*, person absent from Canada or unborn person. 2006, c. 19, Sched. G, s. 3 (2); 2009, c. 33, Sched. 2, s. 41 (3).

Order where persons absent, unborn or under disability

(4) The Divisional Court, if satisfied that the interests of the person under disability, absent or unborn will be sufficiently represented in any case, shall make an order declaring that all persons, with the exceptions, if any, named in the order, are to be conclusively bound, and thereupon all persons, with such exceptions, are conclusively bound by the decision of the court. R.S.O. 1990, c. L.5, s. 28 (4).

Power of court in action for specific performance

29. (1) Where an action is instituted for the specific performance of a contract relating to registered land or a registered charge, the court having cognizance of the action may by such mode as it considers expedient cause all or any persons who have registered estates or rights in the land or charge, or have entered notices, cautions or inhibitions against the same, to appear in the action and show cause why the contract should not be specifically performed, and the court may direct that an order made by the court in the action is binding on such persons or any of them. R.S.O. 1990, c. L.5, s. 29 (1).

Costs in action for specific performance

(2) All costs awarded to a person so appearing may, if the court so orders, be assessed as between solicitor and client. R.S.O. 1990, c. L.5, s. 29 (2).

PART IV APPLICATION FOR FIRST REGISTRATION

APPLICANTS

Application for registration

30. (1) A person entitled for the person's own benefit at law or in equity to an estate in fee simple in land, whether or not subject to encumbrances, or a person capable of disposing for the person's own benefit by way of sale of an estate in fee simple in land, whether or not subject to encumbrances, may apply to the land registrar to be registered under this Act or to have registered in the person's stead any nominee as owner of the land with an absolute, qualified or possessory title, as the case may be. R.S.O. 1990, c. L.5, s. 30 (1); 1998, c. 18, Sched. E, s. 119.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 18, 98.

Application by purchaser

(2) A person who has contracted to buy for the person's own benefit an estate in fee simple in land, whether or not subject to encumbrances, may also apply if the vendor consents to the application. R.S.O. 1990, c. L.5, s. 30 (2).

Application by or authorized by trustee, etc.

(3) A person holding land on trust for sale and a trustee, mortgagee or other person having a power of selling land may authorize the purchaser to make an application to be registered as owner with any title with which an owner is authorized to be registered, and may consent to the performance of the contract being conditional on the purchaser being so registered, or such a person, except a mortgagee, may apply to be registered as owner with the consent of the persons, if any, whose consent is required to the exercise by the applicant of the trust or power of sale. R.S.O. 1990, c. L.5, s. 30 (3).

Application by a mortgagee with a power of sale

(4) A mortgagee having a power of selling land may apply to have the mortgagor or other person owning the equity of redemption registered as owner with any such title. R.S.O. 1990, c. L.5, s. 30 (4).

Registration of Crown as owner

(5) Subject to subsection 43 (4), the land registrar may, upon an application made by or on behalf of any minister of the government of Canada or Ontario, register under this Act any land claimed to be owned by Her Majesty the Queen in right of Canada or Ontario, as the case may be, although the land had not previously been granted by the Crown. R.S.O. 1990, c. L.5, s. 30 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 18, 98.

Application by municipal council

31. (1) The council of any municipality to which this Act applies may by by-law authorize an application to be made to the land registrar to have any land that is within the municipality registered under this Act. R.S.O. 1990, c. L.5, s. 31 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 19 (1), 98.

No consent required

(2) For the purpose of an application under subsection (1), the municipality shall be deemed to be the agent of the owners and other persons having an interest in the land designated in the by-law and it is not necessary to obtain the consent of such owners and other persons to the application. R.S.O. 1990, c. L.5, s. 31 (2).

Costs

(3) The costs of and incidental to an application under subsection (1) shall be borne and paid by the municipality making the application and the municipality may recover the same by levy of a special rate of assessment on all parcels included in the application or in the municipality. R.S.O. 1990, c. L.5, s. 31 (3).

Consent of Director

(4) The land registrar shall not proceed with an application under this section without the consent of the Director of Titles. R.S.O. 1990, c. L.5, s. 31 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed. See: 2012, c. 8, Sched. 28, ss. 19 (2), 98.

Registration fees

(5) The Minister may determine the amount of fees to be paid to the land registrar and to the Director of Titles on an application under this section. R.S.O. 1990, c. L.5, s. 31 (5); 1998, c. 18, Sched. E, s. 120 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed and the following substituted:

Registration fees

(5) The Minister may determine the amount of fees to be paid on an application under this section. 2012, c. 8, Sched. 28, s. 19 (3).

See: 2012, c. 8, Sched. 28, ss. 19 (3), 98.

Fee for certificate as to executions

(6) Despite the regulation under the *Administration of Justice Act*, the Minister may determine the fee payable to a sheriff for a certificate as to executions in connection with an application under this section. R.S.O. 1990, c. L.5, s. 31 (6); 1998, c. 18, Sched. E, s. 120 (2).

Application by Minister where land not in a municipality

(7) The Minister may apply under this section as agent of the owners and other persons having interests in any land designated by the Minister that is not within a municipality, and subsections (2), (3), (5) and (6) apply with necessary modifications. R.S.O. 1990, c. L.5, s. 31 (7).

Land registrar's power to register land to which *Registry Act* applies

32. (1) A land registrar, with the concurrence of the Director of Titles, may, subject to the regulations or the orders made under subsection (4), register under this Act any land in his or her land titles division to which the *Registry Act* applies, including land owned by Her Majesty the Queen in right of Canada or Ontario in respect of which evidence of such ownership has been registered under the *Registry Act*. R.S.O. 1990, c. L.5, s. 32 (1); 1998, c. 18, Sched. E, s. 121 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Power to register land to which *Registry Act* applies

(1) Subject to the regulations or the orders made under subsection (4), the Director may register under this Act any land to which the *Registry Act* applies, including land owned by the Crown in right of Canada or Ontario in respect of which evidence of the ownership has been registered under that Act. 2012, c. 8, Sched. 28, s. 20 (1).

See: 2012, c. 8, Sched. 28, ss. 20 (1), 98.

Discretion of land registrar re quality of title

(2) A parcel of land may be registered under this section with an absolute, possessory, qualified or leasehold title, according to the circumstances, as appears most appropriate to the land registrar. R.S.O. 1990, c. L.5, s. 32 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Discretion re quality of title

(2) A parcel of land may be registered under this section with an absolute, possessory, qualified or leasehold title, according to the circumstances, as appears most appropriate to the Director. 2012, c. 8, Sched. 28, s. 20 (1).

See: 2012, c. 8, Sched. 28, ss. 20 (1), 98.

Title may be qualified as to location and extent

(3) A parcel of land may be registered under this section with a title qualified as to the location of the boundaries and the extent of the parcel. R.S.O. 1990, c. L.5, s. 32 (3).

Orders governing registration

(4) The Director of Titles may make orders governing the registration of land under subsection (1) and the procedure to be followed in connection with the registration, including the notices to be given to owners and encumbrancers. 1998, c. 18, Sched. E, s. 121 (2); 2000, c. 26, Sched. B, s. 12 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 20 (2), 98.

Note: Despite subsection 121 (2) of Schedule E to the *Red Tape Reduction Act, 1998*,

- (a) the Director of Land Registration makes an order under subsection 32 (4) of the Act, as re-enacted by subsection 121 (2) of Schedule E to the *Red Tape Reduction Act, 1998*, that is inconsistent with those regulations; or
- (b) the Director makes an order under subsection 32 (4) of the Act, as amended by paragraph 2 of subsection 12 (6) of Schedule B to the *Red Tape Reduction Act, 2000*, that is inconsistent with those regulations. See: 2000, c. 26, Sched. B, s. 12 (14).

Note: Despite subsection 121 (2) of Schedule E to the *Red Tape Reduction Act, 1998*,

- (a) the Director of Land Registration makes a regulation under subsection 32 (4) of the Act, as re-enacted by subsection 121 (2) of Schedule E to the *Red Tape Reduction Act, 1998*, that is inconsistent with those regulations; or
- (b) the Director makes an order under subsection 32 (4) of the Act, as amended by paragraph 2 of subsection 12 (6) of Schedule B to the *Red Tape Reduction Act, 2000*, that is inconsistent with those regulations. See: 2000, c. 26, Sched. B, s. 12 (14).

Not regulations

(5) An order made by the Director of Titles under subsection (4) is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1998, c. 18, Sched. E, s. 121 (2); 2000, c. 26, Sched. B, s. 12 (6); 2006, c. 21, Sched. F, s. 136 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 20 (2), 98.

Registration of Crown grant

33. (1) A land registrar shall register a Crown grant received by him or her under section 37 of the *Public Lands Act* that meets the requirements for registration set out in this Act and the regulations. R.S.O. 1990, c. L.5, s. 33 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Registration of Crown grant

(1) A Crown grant received under section 37 of the *Public Lands Act* shall be registered if it meets the requirements for registration specified by the Director. 2012, c. 8, Sched. 28, s. 21 (1).

See: 2012, c. 8, Sched. 28, ss. 21 (1), 98.

Where notice of caution or adverse claim unnecessary

(2) It is not necessary to issue a notice in respect of a caution or adverse claim that has been lodged if, by the certificate of the Minister or Deputy Minister of Natural Resources, it appears that the claim in respect of which the caution or adverse claim was lodged was considered by the said Minister and disposed of before the issue of the patent, and, if before the receipt of such a certificate any proceedings have been taken by a land registrar in respect of the caution or adverse claim, he or she shall thereupon discontinue the proceedings and disallow any objection or claim founded thereon and make such order as to costs as the land registrar considers just. R.S.O. 1990, c. L.5, s. 33 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "land registrar" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 21 (2), 98.

Action by land registrar

(3) Where there is no contest as to the rights of the parties, the land registrar may make the requisite entry and issue his or her certificate, but, in case of a contest, the land registrar shall transmit the papers to the Director of Titles before registering the patentee as owner. R.S.O. 1990, c. L.5, s. 33 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Registration if there is a contest

(3) If there is no contest as to the rights of the parties, the requisite entry may be made and the certificate issued, but if there is such a contest, the Director shall determine the issue before registering the patentee as owner. 2012, c. 8, Sched. 28, s. 21 (3).

See: 2012, c. 8, Sched. 28, ss. 21 (3), 98.

Where cautioner consents

(4) Where the cautioner consents to the registration of the patentee, the land registrar need not issue a notice on account of the caution. R.S.O. 1990, c. L.5, s. 33 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 21 (4), 98.

Registration of Crown lease-patents, etc.

(5) Despite subsection 38 (1), letters patent from the Crown demising land or mining rights for a term of years, or for any greater estate, granted on or after the 31st day of December, 1887, shall be deemed to have been and to be, within this section. R.S.O. 1990, c. L.5, s. 33 (5).

Registration of federal patentees

34. Where land patented by the Government of Canada has not been registered under this Act or the *Registry Act* and the patentee applies for registration within five years after the date of the patent, the land registrar has authority to register the patentee as owner of the land without submitting his or her finding upon the application to the Director of Titles for his or her concurrence. R.S.O. 1990, c. L.5, s. 34.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 34 is repealed and the following substituted:

Registration of federal patentees

34. If land patented by the Government of Canada has not been registered under this Act or the *Registry Act* and the patentee applies for registration within five years after the date of the patent, the Director has authority to register the patentee as owner of the land. 2012, c. 8, Sched. 28, s. 22.

See: 2012, c. 8, Sched. 28, ss. 22, 98.

Entry of writs against patentee

35. Upon making an entry of ownership for land granted to a patentee, the land registrar shall, unless the land is free grant or otherwise exempt from execution,

Note: On a day to be named by proclamation of the Lieutenant Governor, section 35 is amended by striking out "land registrar" in the portion before clause (a) and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 23 (1), 98.

- (a) search against the patentee for writs of execution and other liens in the electronic database that the sheriff, who has territorial jurisdiction for the land titles division where the land registrar made the entry, maintains for writs of execution and liens; and

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by striking out "the land registrar made the entry" and substituting "the land is located". See: 2012, c. 8, Sched. 28, ss. 23 (2), 98.

- (b) make an entry against the land of the writs of execution and other liens, if any, affecting the land. 1998, c. 18, Sched. E, s. 122.

TITLES

Possessory title may be registered

36. (1) Where on an application for first registration it appears that the applicant is so entitled by virtue of length of possession of the land, the applicant may be registered as the owner of the land with a possessory title. R.S.O. 1990, c. L.5, s. 36 (1).

Absolute title based on possession

(2) Subject to the approval of the Director of Titles, an applicant for first registration whose claim to ownership is based upon length of possession of the land may be registered as the owner in fee simple with an absolute title of the land. R.S.O. 1990, c. L.5, s. 36 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 24, 98.

A qualified title may be registered

37. (1) Where on the examination of the title it appears to the land registrar that it can be established only for a limited period or subject to certain reservations, the land registrar, on the application of the party applying to be registered, may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date, or arising under a specified instrument, or otherwise particularly described in the register. R.S.O. 1990, c. L.5, s. 37 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Registration of qualified title

(1) If, on the examination of the title, it appears to the Director that the title can be established only for a limited period or subject to certain reservations, land may be registered subject to an entry in the register excepting from the effect of registration any estate, right or interest, including ownership, that arises before a specified date or under a specified instrument or that is otherwise particularly described in the register in the manner approved by the Director. 2012, c. 8, Sched. 28, s. 25.

See: 2012, c. 8, Sched. 28, ss. 25, 98.

Qualified title

(2) A title registered subject to such excepted estate, right or interest shall be called a qualified title. R.S.O. 1990, c. L.5, s. 37 (2).

Register of leasehold land

38. (1) A separate register of leasehold land shall be kept and,

- (a) any person who has contracted to buy for the person's own benefit leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which at least twenty-one are unexpired, or in respect of which the lessee or the lessee's assigns is or are entitled to a renewal term or succession of terms amounting with the part unexpired of the current term to at least twenty-one years, or to a renewal for a life or lives, whether or not subject to encumbrances;
- (b) any person entitled for the person's own benefit, at law or in equity, to leasehold land held under any such lease whether or not subject to encumbrances; or
- (c) any person capable of disposing for the person's own benefit by way of sale or leasehold land held under any such lease whether or not subject to encumbrances,

may apply to the land registrar to be registered or to have registered in the person's stead any nominee as owner of such leasehold land, with the addition, where the lease under which the land is held is derived immediately out of freehold land

and the applicant is able to submit for examination the title of the lessor, of a declaration of the title of the lessor to grant the lease under which the land is held, if, in the case of leasehold land contracted to be bought, the vendor consents to the application. R.S.O. 1990, c. L.5, s. 38 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" in the portion after clause (c) and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 26 (1), 98.

Deposit of lease

- (2) Every applicant for registration of leasehold land shall deposit with the land registrar,
- (a) the lease in respect of which the application is made;
 - (b) a notarial copy of the lease; or
 - (c) a notice that sets out the particulars of the lease in a manner specified by the Director of Titles. 2002, c. 18, Sched. E, s. 6 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Deposit of lease

(2) Every applicant for registration of leasehold land shall deposit the documents that the Director specifies. 2012, c. 8, Sched. 28, s. 26 (2).

See: 2012, c. 8, Sched. 28, ss. 26 (2), 98.

Reference to "registered lease"

(2.1) A reference in this Act to a "registered lease" is a reference to a lease, copy or notice deposited under subsection (2). 2002, c. 18, Sched. E, s. 6 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2.1) is repealed and the following substituted:

Reference to "registered lease"

(2.1) A reference in this Act to a "registered lease" is a reference to a document deposited under subsection (2). 2012, c. 8, Sched. 28, s. 26 (2).

See: 2012, c. 8, Sched. 28, ss. 26 (2), 98.

Where lease contains prohibition against alienation

(3) Leasehold land held under a lease containing an absolute prohibition against alienation shall not be registered. R.S.O. 1990, c. L.5, s. 38 (3).

Where alienation permitted by licence

(4) Leasehold land held under a lease containing a prohibition against alienation, without the licence of some other person, shall not be registered until provision is made in the prescribed manner for preventing alienation, without such licence by entry in the register of a restriction to that effect. R.S.O. 1990, c. L.5, s. 38 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "in the prescribed manner" and substituting "in the manner specified by the Director". See: 2012, c. 8, Sched. 28, ss. 26 (3), 98.

s. 30 to apply to leasehold land

(5) Section 30 applies to leasehold as well as to freehold land. R.S.O. 1990, c. L.5, s. 38 (5).

Leasehold interests

(6) A person may apply for registration of a leasehold interest under this section where the freehold title out of which the person's interest is derived is registered under this Act. R.S.O. 1990, c. L.5, s. 38 (6).

Evidence of title required on application

(7) An applicant or the applicant's nominee shall not be registered as owner of leasehold land until the title to the land is approved by the land registrar and, if the applicant or nominee applies to be registered as owner of leasehold land with a declaration of the title of the lessor to grant the lease under which the land is held, shall not be registered with the declaration until the lessor, after an examination of the lessor's title by the land registrar, is declared to have had an absolute or qualified title to grant the lease under which the land is held. R.S.O. 1990, c. L.5, s. 38 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is repealed and the following substituted:

Evidence of title required on application

(7) An applicant or the applicant's nominee shall not be registered as owner of leasehold land until the title to the land is approved in the manner specified by the Director. 2012, c. 8, Sched. 28, s. 26 (4).

Registration with declaration of title

(8) An applicant or the applicant's nominee who applies to be registered as owner of leasehold land with a declaration of the title of the lessor to grant the lease under which the land is held shall not be registered with the declaration until the lessor, after an examination of the lessor's title in the manner specified by the Director, is declared to have had an absolute or qualified title to grant the lease under which the land is held. 2012, c. 8, Sched. 28, s. 26 (4).

See: 2012, c. 8, Sched. 28, ss. 26 (4), 98.

EASEMENTS AND MINING RIGHTS

Registration of easements, mining rights

39. (1) The land registrar may register the owner of,

(a) any incorporeal hereditament of freehold tenure enjoyed in gross; or

(b) any mines or minerals where the ownership of the same has been severed from the ownership of the land,

in the same manner and with the same incidents in and with which the land registrar is by this Act empowered to register the owner of land, or as near thereto as circumstances admit. R.S.O. 1990, c. L.5, s. 39 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Registration of easements, mining rights

(1) In the same manner and with the same incidents in and with which this Act empowers the registration of the owner of land, or as near to that as circumstances admit, the Director may register the owner of,

(a) any incorporeal hereditament of freehold tenure enjoyed in gross; or

(b) any mines or minerals where the ownership of them has been severed from the ownership of the land. 2012, c. 8, Sched. 28, s. 27 (1).

See: 2012, c. 8, Sched. 28, ss. 27 (1), 98.

Registration of easements when dominant land registered

(2) Where an easement in or over unregistered land is granted as appurtenant to registered land, the land registrar, after such examination as he or she considers necessary, may enter the easement in the register of the dominant land with a declaration that the title thereto is absolute, qualified or possessory, or otherwise as the case requires, and shall cause to be registered in the proper registry division a certificate of such entry. R.S.O. 1990, c. L.5, s. 39 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 27 (2), 98.

Certificate of easement when dominant land unregistered

(3) Where an easement in or over registered land is granted as appurtenant to unregistered land, the land registrar may issue a certificate setting out the easement and the land to which it is appurtenant, which may be registered in the registry division in which the land is situate, and he or she shall note on the register that such certificate has been issued. R.S.O. 1990, c. L.5, s. 39 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 27 (2), 98.

Notice of easement

(4) Where the existence of an easement is proved, the land registrar may, if he or she thinks fit, enter notice thereof on the register. R.S.O. 1990, c. L.5, s. 39 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed and the following substituted:

Notice of easement

(4) If the existence of an easement is proved in the manner specified by the Director, notice of the easement may be entered on the register. 2012, c. 8, Sched. 28, s. 27 (3).

See: 2012, c. 8, Sched. 28, ss. 27 (3), 98.

Statement of appurtenant easement on certificate, etc.

(5) Where title is shown to an easement appurtenant to land being registered, the facts may be stated in the entry and certificate of ownership. R.S.O. 1990, c. L.5, s. 39 (5).

Easement created by condominium declaration

40. (1) Where the first registered description of an easement is that contained in a condominium declaration and description, and the easement is expressly intended,

- (a) to be an easement through the common elements and to benefit other land owned by the declarant; or
- (b) to be an easement through other land owned by the declarant and to benefit the condominium property,

the easement is created for all purposes to the same extent as if it had been created by a transfer and the declarant had not been the same person as the owner of the other land. R.S.O. 1990, c. L.5, s. 40 (1).

Easement to benefit condominium property

(2) Where, in a transfer that is registered before the registration of a transfer of any unit made by the declarant, an easement through land outside the condominium property is transferred by the declarant to the condominium corporation to be part of the common elements, the easement does not merge by operation of law. R.S.O. 1990, c. L.5, s. 40 (2).

Easement affecting common elements

(3) Where, in a transfer that is registered before the registration of a transfer of any unit made by the declarant, the common elements are made subject to an easement expressly intended to benefit other land owned by the declarant, the easement is created for all purposes as if the declarant had not been the same person as the owner of the other land. R.S.O. 1990, c. L.5, s. 40 (3).

Easement becomes part of common elements

(4) Where, in an instrument, an intention is expressed by a condominium corporation that an easement transferred to the corporation is to be part of the common elements, and any instrument in relation thereto required by the *Condominium Act, 1998* or a predecessor of that Act has been registered, the easement, upon registration of the instrument in which the intention is expressed, becomes part of the common elements. R.S.O. 1990, c. L.5, s. 40 (4); 2009, c. 33, Sched. 17, s. 5 (9).

Exception re *Planning Act*

(5) Section 50 of the *Planning Act* does not apply to an easement to which subsection (1) of this section applies if the condominium description was approved or exempted under subsection 50 (2) of the *Condominium Act, 1998*, or a predecessor thereof. R.S.O. 1990, c. L.5, s. 40 (5); 2009, c. 33, Sched. 17, s. 5 (10).

Retroactive effect

(6) Except to the extent that rights governed by this section have been determined by a court, this section has retroactive application. R.S.O. 1990, c. L.5, s. 40 (6).

Definitions

(7) In this section,

“common elements”, “declarant”, “declaration”, “description”, “property” and “unit” have the same meaning as in the *Condominium Act, 1998*. (“parties communes”, “déclarant”, “déclaration”, “description”, “propriété”, “partie privative”) 2009, c. 33, Sched. 17, s. 5 (11).

PROCEDURE ON FIRST REGISTRATION

Regulations as to examination of title

41. The examination of a title shall be conducted in the prescribed manner, subject to the following:

Note: On a day to be named by proclamation of the Lieutenant Governor, section 41 is amended by striking out “in the prescribed manner” in the portion before paragraph 1 and substituting “in the manner approved by the Director”. See: 2012, c. 8, Sched. 28, ss. 28 (1), 98.

1. Where notice has been given, sufficient opportunity shall be afforded to any person desirous of objecting to come in and state the person’s objections to the land registrar.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 is amended by striking out “land registrar” and substituting “Director”. See: 2012, c. 8, Sched. 28, ss. 28 (2), 98.

2. The Director of Titles has jurisdiction to hear and determine any such objections, subject to an appeal to the Divisional Court in the prescribed manner and on the prescribed conditions.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 is repealed and the following substituted:

2. The Director has jurisdiction to hear and determine any objections, subject to an appeal to the Divisional Court in the manner and on the conditions specified by the Director.

See: 2012, c. 8, Sched. 28, ss. 28 (3), 98.

3. If the land registrar, upon the examination of any title, is of opinion that it is open to objection but is nevertheless a title under which the holding will not be disturbed, the land registrar may approve of it or may require the applicant to apply to the court, upon a statement signed by the land registrar, for its sanction to the registration.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 is amended by striking out "land registrar" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 28 (4), 98.

4. It is not necessary to produce any evidence that by the *Vendors and Purchasers Act* is dispensed with as between vendor and purchaser or to produce or account for the originals of registered instruments unless the land registrar otherwise directs.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 28 (4), 98.

5. The land registrar may receive and act upon any evidence that is received in court on a question of title, or any evidence that the practice of conveyancers authorizes to be received on an investigation of a title out of court, or any other evidence, whether it is or is not receivable or sufficient in point of strict law, or according to the practice of conveyancers, if it satisfies the land registrar of the truth of the facts intended to be made out thereby.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 5 is amended by striking out "land registrar" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 28 (4), 98.

6. The land registrar may refer to and act upon not only the evidence adduced before him or her in the proceeding in which it is adduced but also any evidence adduced before the land registrar in any other proceeding wherein the facts to which it relates were or are in question.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 6 is amended by striking out "land registrar" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 28 (4), 98.

7. The land registrar may also act upon his or her own personal knowledge of material facts affecting the title upon making and filing a report, stating his or her knowledge of the particular facts and the means he or she had of obtaining such knowledge. R.S.O. 1990, c. L.5, s. 41; 2009, c. 33, Sched. 17, s. 5 (12).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 7 is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 28 (4), 98.

Notice

42. A notice of an application for first registration is sufficiently served upon a person having an interest by virtue of a conveyance, mortgage, charge or assignment in land adjoining the land of or claimed by the applicant for first registration if it is sent by registered mail addressed to that person at the address appearing on the conveyance, mortgage, charge or assignment, or where no address for that person appears on the conveyance, mortgage, charge, or assignment, to the solicitor whose name appears on the conveyance, mortgage, charge or assignment registered under this Act, the *Registry Act* or the regulations. 2002, c. 18, Sched. E, s. 6 (2).

Caution against registration of land

43. (1) A person having or claiming such an interest in unregistered land as entitles the person to object to any disposition thereof being made without the person's consent may apply to the land registrar for the registration of a caution to the effect that the cautioner is entitled to notice in the prescribed form, and to be served in the prescribed manner, of any application that may be made for the registration of the land. R.S.O. 1990, c. L.5, s. 43 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Caution against registration of land

(1) A person having or claiming an interest in unregistered land that entitles the person to object to any disposition of the land being made without the person's consent may apply to the Director for the registration of a caution to the effect that the cautioner is entitled to notice of any application that is made for the registration of the land. 2012, c. 8, Sched. 28, s. 29 (1).

Notice

(1.1) The notice shall be in the form and shall be served in the manner that the Director requires. 2012, c. 8, Sched. 28, s. 29 (1).

See: 2012, c. 8, Sched. 28, ss. 29 (1), 98.

Renewal

(2) Every caution under this section shall be renewed before the expiration of five years from the date of registration of the caution; otherwise it ceases to have effect. R.S.O. 1990, c. L.5, s. 43 (2).

Unpatented land

(3) A caution registered under this section in respect of unpatented land has no validity unless the description contained therein specifies the land in accordance with the description subsequently contained in the patent or describes it in such manner that the land registrar may know that the description in the caution is intended to affect the land described in the patent. R.S.O. 1990, c. L.5, s. 43 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 29 (2), 98.

Cautioner entitled to notice of proposed registration of land

(4) After a caution has been registered in respect of unregistered land and while the caution is in force, registration shall not be made of the land until notice has been served on the cautioner to appear and oppose the registration and until the prescribed time has elapsed after the date of the service of the notice, or the cautioner has appeared, whichever first happens. R.S.O. 1990, c. L.5, s. 43 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "the prescribed time" and substituting "the time specified in the notice". See: 2012, c. 8, Sched. 28, ss. 29 (3), 98.

EFFECT OF FIRST REGISTRATION

Liability of registered land to easements and certain other rights

44. (1) All registered land, unless the contrary is expressed on the register, is subject to such of the following liabilities, rights and interests as for the time being may be subsisting in reference thereto, and such liabilities, rights and interests shall not be deemed to be encumbrances within the meaning of this Act:

1. Provincial taxes and municipal taxes, charges, rates or assessments, and school or water rates.
2. Any right of way, watercourse, and right of water, and other easements.
3. Any title or lien that, by possession or improvements, the owner or person interested in any adjoining land has acquired to or in respect of the land.
4. Any lease or agreement for a lease, for a period yet to run that does not exceed three years, where there is actual occupation under it.
5. Any right under Part II of the *Family Law Act*, of the spouse of the person registered as owner.
6. A construction lien where the time limited for its registration has not expired.
7. Any right of expropriation, access or user, or any other right, conferred upon or reserved to or vested in the Crown by or under the authority of any statute of Canada or Ontario.
8. Any public highway.
9. Any liabilities, rights and interests created under section 38 of the *Public Transportation and Highway Improvement Act*.
10. Any by-law heretofore passed under section 34 of the *Planning Act* or a predecessor of that section, and any other municipal by-law heretofore or hereafter passed, affecting land that does not directly affect the title to land.
11. Sections 50 and 50.1 of the *Planning Act*.
12. Where the registered owner is or a previous registered owner was a railway company, any interest that may be or may have been created by any instrument deposited in the office of the Secretary of State of Canada or the Registrar General of Canada, as the case may be, under section 104 of the *Canada Transportation Act* (Canada), or any predecessor of it, but, where the previous registered owner was a railway company, this paragraph does not apply to a subsequent registered owner, except a railway company, unless a note of the previous ownership of the land by the railway company has been entered in the title register.
13. REPEALED: 1997, c. 24, s. 214.
14. Any right of the wife of the person registered as owner to dower in case of surviving the owner. R.S.O. 1990, c. L.5, s. 44 (1); 1991, c. 9, s. 2; 1993, c. 27, Sched.; 1997, c. 24, s. 214; 2006, c. 19, Sched. G, s. 3 (3); 2009, c. 34, Sched. T, s. 2 (1).

Effect of registration of land upon timber licences

(2) Where a licence under Part III of the *Crown Forest Sustainability Act, 1994* has been or is granted and the land is registered under this Act, the land shall be deemed to have been and to be subject to the rights of the licensee or the assigns of the licensee for the current licence year under the licence, and to the rights of Her Majesty in the pine trees under the *Public Lands Act*, without the fact of the land being so subject being expressed in the entry in the register. R.S.O. 1990, c. L.5, s. 44 (2); 1994, c. 25, s. 81.

Where owner of adjoining land has no right

(3) A parcel of land registered under this Act is not subject to paragraph 3 of subsection (1) if a notice of the application for first registration that contained an accurate description of the parcel, or of a former larger parcel of which the parcel is a part, was served upon the person who at the time of giving the notice was the owner, mortgagee, chargee or purchaser, or assignee thereof, under a registered instrument of adjoining land and no objection to the first registration was filed with the land registrar within the time allowed by the notice. R.S.O. 1990, c. L.5, s. 44 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "with the land registrar". See: 2012, c. 8, Sched. 28, ss. 30, 98.

Application under s. 30 deemed action for recovery of land

(4) An application under section 30 shall be deemed to be an action for the recovery of land within the meaning of the *Real Property Limitations Act*. R.S.O. 1990, c. L.5, s. 44 (4); 2002, c. 24, Sched. B, s. 40 (1).

Application of subs. (1), par. 6

(5) Paragraph 6 of subsection (1) does not confer upon a person claiming a construction lien any greater right than the person would have if the land were registered under the *Registry Act*. R.S.O. 1990, c. L.5, s. 44 (5).

Writs of execution

(6) The title of the registered owner for the time being of land is subject to enforceable writs of execution against the owner that have been recorded under section 136, but no writ of execution against a prior registered owner is enforceable in respect of the land unless a note of such writ has been entered in the title register. R.S.O. 1990, c. L.5, s. 44 (6).

Estate of first registered owner with absolute title

45. The first registration of a person as owner of land, in this Act referred to as first registered owner with an absolute title, vests in the person so registered an estate in fee simple in the land, together with all rights, privileges and appurtenances, free from all estates and interests whatsoever, including estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario, but subject to the following:

1. The encumbrances, if any, entered on the register.
2. The liabilities, rights and interests that are declared for the purposes of this Act not to be encumbrances, unless the contrary is expressed on the register.
3. Where the first registered owner is not entitled for the owner's own benefit to the land registered, then as between the owner and any persons claiming under the owner, any unregistered estates, rights, interests or equities to which such person may be entitled. R.S.O. 1990, c. L.5, s. 45.

Estate of owner registered with a qualified title

46. (1) The registration of a person as first registered owner with a qualified title has the same effect as the registration of such person with an absolute title, except that registration with a qualified title does not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted. R.S.O. 1990, c. L.5, s. 46 (1).

Application for absolute title

(2) The registered owner of land with a qualified title may apply to the land registrar to be registered as owner of the land with an absolute title. 1998, c. 18, Sched. E, s. 123.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 31 (1), 98.

Forms and procedure

(3) The applicant shall complete the prescribed forms for the application and comply with the procedure that the Director of Titles specifies. 1998, c. 18, Sched. E, s. 123.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Forms and procedure

(3) The applicant shall complete the forms for the application that the Director requires and comply with the procedure that the Director specifies. 2012, c. 8, Sched. 28, s. 31 (2).

See: 2012, c. 8, Sched. 28, ss. 31 (2), 98.

Hearing

(4) The Director of Titles may hear and determine the objections, if any, to the application. 1998, c. 18, Sched. E, s. 123.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 31 (3), 98.

Time of registration

(5) The land registrar shall not grant an application under subsection (2) unless all objections have been withdrawn or have been finally disposed of and,

- (a) the Director of Titles is satisfied that the estate, right or interest in respect of which the title is qualified is no longer capable of enforcement; or
- (b) the Director of Titles is prepared to accept a bond or covenant from the applicant in accordance with section 55. 1998, c. 18, Sched. E, s. 123.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed and the following substituted:

Time of registration

(5) An application under subsection (2) shall not be granted unless,

- (a) all objections have been withdrawn or have been finally disposed of; and
- (b) the Director is satisfied that the estate, right or interest in respect of which the title is qualified is no longer capable of enforcement, or is prepared to accept a bond or covenant from the applicant in accordance with section 55. 2012, c. 8, Sched. 28, s. 31 (4).

See: 2012, c. 8, Sched. 28, ss. 31 (4), 98.

Estate of first registered owner with possessory title

47. (1) The registration of a person as first registered owner with a possessory title only does not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of the first registered owner, and subsisting or capable of arising at the time of registration of such owner, but otherwise has the same effect as registration of a person with an absolute title. R.S.O. 1990, c. L.5, s. 47 (1).

Change from possessory title to absolute or qualified title

(2) The registered owner of land with a possessory title only may at any time apply to the land registrar to be registered as owner of the land with an absolute or qualified title, but the applicant shall not be so registered until the title is approved by the land registrar in the same manner as if the application were for first registration with an absolute or qualified title. R.S.O. 1990, c. L.5, s. 47 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "land registrar" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 32, 98.

Application to be registered as absolute or qualified title after ten years

(3) After the expiration of ten years from the date of registration of a person as the registered owner with a possessory title only, the then registered owner of the land may, upon payment of the required fees, apply to the land registrar to be entered as owner with an absolute or qualified title, and the land registrar may, either forthwith or after requiring such evidence to be furnished and notices to be given as he or she considers expedient, register the applicant as owner in fee simple with an absolute title or qualified title, subject to such encumbrances, if any, as the condition of the title requires. R.S.O. 1990, c. L.5, s. 47 (3); 1998, c. 18, Sched. E, s. 124.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "land registrar" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 32, 98.

Estate of first registered owner of leasehold land with a declaration of absolute title of lessor to grant lease

48. The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had an absolute title to grant the lease under which the land is held, vests in such person the land comprised in the registered lease relating to the land for all the leasehold estate therein described with all implied or expressed rights, privileges and appurtenances, free from all estates and interests whatsoever, including estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario, but subject to the following:

1. All implied and express covenants, obligations and liabilities incident to such leasehold estate.
2. The encumbrances, if any, entered on the register.
3. The liabilities, rights and interests that affect the leasehold estate and that are by this Act declared not to be encumbrances in the case of registered freehold land, unless the contrary is expressed on the register.
4. Where the first registered owner is not entitled for the owner's own benefit to the land registered, then as between the owner and any person for whom the owner holds or claiming under the owner, any unregistered estates, rights, interests or equities to which such person may be entitled. R.S.O. 1990, c. L.5, s. 48.

Estate of first registered owner of leasehold land without a declaration of title of lessor to grant lease

49. The registration of a person as first registered owner of leasehold land, without a declaration of the title of the lessor, does not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held, but, save as aforesaid, has the same effect as the registration of a person as first registered owner of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1990, c. L.5, s. 49.

Lessor may be declared to have a qualified title to grant lease

50. (1) Where on the examination of the title of a lessor by the land registrar it appears to the land registrar that the title of the lessor to grant the lease under which the land is held can be established only for a limited period or subject to certain reservations, the land registrar may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register, and the title of a lessor subject to such excepted estate, right or interest shall be deemed to be a qualified title. R.S.O. 1990, c. L.5, s. 50 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Lessor's qualified title

(1) If, on the examination of the title of a lessor, it appears to the Director that the title of the lessor to grant the lease under which the land is held can be established only for a limited period or subject to certain reservations, an entry may be made in the register excepting from the effect of registration any estate, right or interest that arises before a specified date or under a specified instrument or that is otherwise particularly described in the register in the manner approved by the Director, and the title of a lessor subject to such excepted estate, right or interest shall be deemed to be a qualified title. 2012, c. 8, Sched. 28, s. 33.

See: 2012, c. 8, Sched. 28, ss. 33, 98.

Effect of registration

(2) The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had a qualified title to grant the lease under which the land is held, has the same effect as the registration of such person with a declaration that the lessor had an absolute title to grant the lease under which the land is held, except that registration with the declaration of a qualified title does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1990, c. L.5, s. 50 (2).

No title by adverse possession, etc.

51. (1) Despite any provision of this Act, the *Real Property Limitations Act* or any other Act, no title to and no right or interest in land registered under this Act that is adverse to or in derogation of the title of the registered owner shall be acquired hereafter or be deemed to have been acquired heretofore by any length of possession or by prescription. R.S.O. 1990, c. L.5, s. 51 (1); 2002, c. 24, Sched. B, s. 40 (2).

Operation of section

(2) This section does not prejudice, as against any person registered as first owner of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of the land at the time when the registration of the first owner took place. R.S.O. 1990, c. L.5, s. 51 (2).

Registration of certificate

52. (1) A certificate by the land registrar of the first registration of an owner under this Act shall be registered in the registry division in which the land is situate, and thereafter the *Registry Act* ceases to apply to the land. R.S.O. 1990, c. L.5, s. 52 (1).

Particulars to be stated in certificate for registry office

(2) The certificate, besides describing the land, shall state the date of the first registration, the number of the parcel and the register in which the land is registered, and the registrar shall in the abstract index enter the number of the parcel and the register as given in the certificate. R.S.O. 1990, c. L.5, s. 52 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 52 is repealed and the following substituted:

No further application of *Registry Act*

52. Upon registration of land under this Act, the *Registry Act* ceases to apply to the land except to the extent specified on the parcel register. 2012, c. 8, Sched. 28, s. 34.

See: 2012, c. 8, Sched. 28, ss. 34, 98.

Land subject to mortgage at time of registration

53. (1) Where land is registered subject to mortgages existing thereon at the time of the first registration, the mortgages shall be noted in the register in the same order as they are registered in the registry office, if such mortgages have been so registered, or the dates of the respective registrations thereof shall be stated, but this shall not be taken as an affirmation that such mortgages rank in the order in which they were registered or in the order in which they are noted. R.S.O. 1990, c. L.5, s. 53 (1).

Abstracts of instruments

(2) Abstracts of all instruments dealing with such mortgages shall thereafter be entered in the register, and the entry thereof shall be deemed the registration of the instrument, and the rights of the parties interested or claiming to be interested in any such mortgage so far as it affects land under this Act shall, subject to sections 36, 37, 39, 45, 47 and 87 to 90, be decided under the registry law as if the registrations had been made under the *Registry Act*. R.S.O. 1990, c. L.5, s. 53 (2).

PART V ASSURANCE FUND

CONSTITUTION OF FUND, ETC.

Land Titles Assurance Fund

54. (1) The Land Titles Assurance Fund and The Land Titles Survey Fund are amalgamated and continued under the name The Land Titles Assurance Fund in English and the name *Caissé d'assurance des droits immobiliers* in French. 2002, c. 18, Sched. E, s. 6 (3).

Idem

(2) Where the amount standing to the credit of the Assurance Fund is less than \$1,000,000, the Assurance Fund shall be increased by payment into it from the Consolidated Revenue Fund of an amount fixed by the Lieutenant Governor in Council. R.S.O. 1990, c. L.5, s. 54 (2).

Money paid into court

(3) Money paid under subsection (2) shall be paid into court. R.S.O. 1990, c. L.5, s. 54 (3).

Land Titles Assurance Fund Account

(4) Subject to subsection (5), money standing to the credit of the Assurance Fund and payments received under subsection (2) shall be credited to The Land Titles Assurance Fund Account and shall be invested from time to time in the same manner as other money paid into court, and, subject to subsection (6), the interest and income derived therefrom shall be credited to the same account. R.S.O. 1990, c. L.5, s. 54 (4).

Payment to Minister of Finance

(5) The money in court at the credit of the Assurance Fund shall on his or her demand be paid to the Minister of Finance. R.S.O. 1990, c. L.5, s. 54 (5); 2009, c. 33, Sched. 17, s. 5 (13).

Minister to issue stock for sums received from Assurance Fund

(6) The Minister of Finance, on receipt of the money paid to him or her under subsection (5), shall issue to the Accountant of the Superior Court of Justice in trust Ontario Government stock to an amount equal to the sum so received, and the stock shall represent the Assurance Fund and be available for the same purposes. R.S.O. 1990, c. L.5, s. 54 (6); 2006, c. 19, Sched. C, s. 1 (3); 2009, c. 33, Sched. 17, s. 5 (13).

Conditions of issue

(7) The stock shall be paid or may be redeemed at such time and shall be subject to such conditions as to inscription, registration and transfer as the Lieutenant Governor in Council considers advisable, and shall bear interest at the rate of 2 1/2 per cent per year. R.S.O. 1990, c. L.5, s. 54 (7).

Charge on Consolidated Revenue Fund

(8) The stock, together with the interest thereon, shall be charged upon and paid out of the Consolidated Revenue Fund. R.S.O. 1990, c. L.5, s. 54 (8).

Indemnification of Assurance Fund

55. The land registrar may require any applicant for registration to indemnify The Land Titles Assurance Fund against loss by a bond or covenant to Her Majesty, either with or without sureties, or by such other security as he or she considers expedient. R.S.O. 1990, c. L.5, s. 55.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 55 is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 35, 98.

Financial assistance for surveys

56. (1) An application for financial assistance from The Land Titles Assurance Fund may be made to the Director of Titles by,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "Director of Titles" and substituting "Director" in the portion before clause (a). See: 2012, c. 8, Sched. 28, ss. 36, 98.

- (a) a registered owner in respect of the costs of a survey of the owner's land;
- (b) an applicant for first registration under this Act in respect of the costs of a survey of the applicant's land;
- (c) the council of a municipality in respect of the costs of and incidental to an application under section 31;
- (d) an applicant under the *Boundaries Act* in respect of the costs of and incidental to an application under that Act, including survey costs. 2002, c. 18, Sched. E, s. 6 (4).

Direction for payment

(2) The Director of Titles may direct that all or a part of the costs mentioned in an application made under subsection (1) be paid out of The Land Titles Assurance Fund. 2002, c. 18, Sched. E, s. 6 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 36, 98.

Payment re surveys for property mapping

(3) The Director of Titles may direct that all or part of the costs of a survey of land required to facilitate the inclusion of the land in a property map referred to in subsection 141 (3) be paid out of The Land Titles Assurance Fund. 2002, c. 18, Sched. E, s. 6 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 36, 98.

Payment from Fund

(4) Upon receipt of a direction of the Director of Titles, the Accountant of the Superior Court of Justice shall pay to the person or municipality named in the direction such sum or sums, at such time or times as are stipulated in the direction, out of The Land Titles Assurance Fund, so far as that Fund is sufficient for the purpose. 2002, c. 18, Sched. E, s. 6 (4); 2006, c. 19, Sched. C, s. 1 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 36, 98.

Determination final

(5) The determination by the Director of Titles of the amount, if any, to be paid from The Land Titles Assurance Fund is not subject to appeal. 2002, c. 18, Sched. E, s. 6 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 36, 98.

CLAIMS AGAINST FUND

Remedy of person wrongfully deprived of land

57. (1) A person wrongfully deprived of land or of some estate or interest therein, by reason of the land being brought under this Act or by reason of some other person being registered as owner through fraud or by reason of any misdescription, omission or other error in a certificate of ownership or charge, or in an entry on the register, is entitled to recover what is just, by way of compensation or damages, from the person on whose application the erroneous registration was made or who acquired the title through the fraud or error. R.S.O. 1990, c. L.5, s. 57 (1).

Where no compensation

(2) A person is not entitled to compensation from The Land Titles Assurance Fund in respect of an interest in land existing at the time the land is brought under this Act unless that interest is registered against the title to the land under the *Registry Act* or notice of it is given to the land registrar before the first registration under this Act of a person as owner of the land. R.S.O. 1990, c. L.5, s. 57 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 37 (1), 98.

Purchaser or mortgagee in good faith for value not liable

(3) Subsection (1) does not render liable any purchaser or mortgagee in good faith for valuable consideration by reason of the vendor or mortgagor having been registered as owner through fraud or error or having derived title from or through a person registered as owner through fraud or error, whether the fraud or error consists in a wrong description of the property or otherwise. R.S.O. 1990, c. L.5, s. 57 (3).

Compensation from Fund

(4) A person is entitled to compensation from the Assurance Fund if,

(a) the person is wrongfully deprived of land or of some estate or interest in land by reason of,

(i) the land being brought under this Act,

(ii) some other person being registered as owner through fraud, or

(iii) any misdescription, omission or other error in a certificate of ownership or charge or in an entry on the register;

(b) the person has demonstrated the requisite due diligence as specified by the Director if the person is wrongfully deprived of land or of some estate or interest in land by reason of some other person being registered as owner through fraud;

(c) the person is unable under subsection (1) or otherwise to recover just compensation for the person's loss; and

(d) the person makes an application for compensation within the time period specified in subsection (5.1). 2006, c. 34, s. 15 (2).

Earlier payment

(4.1) A person who is a member of a prescribed class of persons is entitled to compensation from the Assurance Fund if,

(a) one of the following conditions is met:

(i) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of the registration of an instrument described in clause (13) (b) and the Director of Titles or a court, under that clause, has directed that the registration of the instrument be deleted from the register,

Note: On a day to be named by proclamation of the Lieutenant Governor, subclause (i) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 37 (2), 98.

(ii) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of a rectification of the register made under clause (13) (a) or (c);

(b) the person has demonstrated the requisite due diligence as specified by the Director with respect to the instrument that is the subject of the rectification; and

(c) the person makes an application for compensation within the time period specified in subsection (5.1). 2006, c. 34, s. 15 (2).

Same

(4.2) A person who is a member of a prescribed class of persons is entitled to compensation from the Assurance Fund if,

- (a) the Director of Titles or a court, under clause (13) (b), has directed that the registration of an instrument described in that clause be deleted from the register;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 37 (2), 98.

- (b) the person has suffered a loss as a result of the deletion described in clause (a); and
(c) the person makes an application for compensation within the time period specified in subsection (5.1). 2006, c. 34, s. 15 (2).

Reliance on automated index

(5) A person who suffers damage because of an error in recording an instrument affecting land designated under Part II of the *Land Registration Reform Act* in the parcel register is entitled to compensation from the Assurance Fund if the person makes an application for compensation within the time period specified in subsection (5.1). 2006, c. 34, s. 15 (2).

Time for application

(5.1) A person claiming to be entitled to the payment of compensation under subsection (4), (4.1) or (5) shall make an application within six years from the time of having suffered the loss described in the applicable subsection or, in the case of a minor or a person who is incapable as defined in the *Substitute Decisions Act, 1992*, within six years from the date on which the minority or incapacity ceased. 2006, c. 34, s. 15 (2); 2009, c. 33, Sched. 2, s. 41 (4).

Application for compensation from Assurance Fund

(6) A person claiming to be entitled to payment of compensation out of The Land Titles Assurance Fund shall apply to the Director of Titles. R.S.O. 1990, c. L.5, s. 57 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 37 (2), 98.

Hearing

(7) Except if he or she determines the claim be paid in full, the Director of Titles may hold a hearing, and the claimant and the other persons that the Director of Titles specifies are parties to the proceeding before the Director. 2006, c. 34, s. 15 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is repealed and the following substituted:

Hearing

(7) Except if he or she determines the claim be paid in full, the Director may hold a hearing, and the claimant and the other persons that the Director specifies are parties to the proceeding before the Director. 2012, c. 8, Sched. 28, s. 37 (3).

See: 2012, c. 8, Sched. 28, ss. 37 (3), 98.

How compensation to be determined

(8) The liability of the Assurance Fund for compensation and the amount of compensation shall be determined by the Director of Titles, and the costs of the proceeding are in the discretion of the Director of Titles. R.S.O. 1990, c. L.5, s. 57 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is amended by striking out "Director of Titles" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 37 (4), 98.

Claimant to be notified

(9) The Director of Titles shall serve notice of his or her determination under subsection (8) by mail on the claimant. R.S.O. 1990, c. L.5, s. 57 (9); 2009, c. 33, Sched. 17, s. 5 (14).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 37 (4), 98.

Appeal

(10) Where the Director of Titles determines that compensation should be paid but that the claim not be paid in full, the claimant, if intending to appeal, shall, within a period of 30 days after the date of mailing of the notice under subsection (9), serve on the Director of Titles notice of intention to appeal under section 26, and the Director of Titles shall not certify under subsection (11) the amount to the Minister of Finance if a notice of appeal is received within that period or until after the expiry of that period if no notice of appeal is received. R.S.O. 1990, c. L.5, s. 57 (10); 1998, c. 18, Sched. E, s. 125; 2009, c. 33, Sched. 17, s. 5 (13).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (10) is amended by striking out "Director of Titles" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 37 (4), 98.

Payment out of Assurance Fund

(11) Subject to subsection (10), the Director of Titles shall certify to the Minister of Finance any amount found to be payable under this section, and, upon receiving the certificate, that Minister shall pay the amount to the person entitled to it out of the Consolidated Revenue Fund, and the sums so paid out shall be credited as payments on account of the stock in the hands of the Accountant of the Superior Court of Justice, and the amount of the stock shall be reduced accordingly. 2009, c. 33, Sched. 17, s. 5 (15).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (11) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 37 (4), 98.

Recovery of compensation paid in error

(11.1) If, after compensation is paid out of the Assurance Fund, the Director of Titles determines that any part of the compensation was paid in error for any reason, including on the basis of any misrepresentation or any lack of information available at the time of making the payment, the Director of Titles may commence an action to recover the amount of that part from the person who received it. 2006, c. 34, s. 15 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (11.1) is amended by striking out "Director of Titles" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 37 (4), 98.

Subrogation

(12) If any amount is paid out of the Assurance Fund to an applicant in respect of a loss, the Director of Titles is subrogated to the right of the applicant and the applicant's heirs, executors, successors and assigns to recover compensation or damages from any person in respect of the loss, and the certificate of the Director of Titles of the payment out of the Assurance Fund is sufficient proof of the payment. 2006, c. 34, s. 15 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (12) is amended by striking out "Director of Titles" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 37 (4), 98.

Agreements

(12.1) For the purposes of subsection (12), the Director of Titles may enter into agreements with any person or body that is liable to make any payment to a person who has received compensation from the Assurance Fund if the liability arises out of conduct that gave rise to the payment made from the Assurance Fund. 2006, c. 34, s. 15 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (12.1) is amended by striking out "Director of Titles" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 37 (4), 98.

Rectification of register

(13) Subject to subsection (14), the Director of Titles may, in the first instance or after a reference to a court, or a court may direct the rectification of the register if,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (13) is amended by striking out "Director of Titles" in the portion before clause (a) and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 37 (4), 98.

- (a) a registered instrument would be absolutely void if unregistered;
- (b) the Director of Titles or a court, as the case may be, is satisfied, on the basis of evidence that the Director of Titles specifies or the court orders, that a fraudulent instrument has been registered on or after October 19, 2006; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed and the following substituted:

- (b) the Director or a court, as the case may be, is satisfied, on the basis of evidence that the Director specifies or the court orders, that a fraudulent instrument has been registered on or after October 19, 2006; or

See: 2012, c. 8, Sched. 28, ss. 37 (5), 98.

- (c) the effect of the error, if not rectified, would be to deprive a person of land of which the person is legally in possession or legally in receipt of the rents and profits. 2006, c. 34, s. 15 (6).

Notice to Director of Titles

(14) A court shall not direct the rectification of the register under clause (13) (b) unless the applicant in the proceeding before the court has given notice of the proceeding to the Director of Titles and the Director of Titles is a party to the proceeding. 2006, c. 34, s. 15 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (14) is amended by striking out "Director of Titles" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 37 (6), 98.

Caution in case of fraud

(15) If it appears to the Director of Titles that a registered instrument may be fraudulent, the Director of Titles may of his or her own accord and without affidavit enter a caution to prevent dealing with the registered land. 2006, c. 34, s. 15 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (15) is repealed and the following substituted:

Caution in case of fraud

(15) If it appears to the Director that a registered instrument may be fraudulent, the Director may of his or her own accord and without affidavit require that a caution be entered to prevent dealing with the registered land. 2012, c. 8, Sched. 28, s. 37 (7).

See: 2012, c. 8, Sched. 28, ss. 37 (7), 98.

Hearing

(16) If the Director of Titles has entered a caution under subsection (15), the Director of Titles may hold a hearing before making any rectification of the register under subsection (13) and subsections 10 (4), (5) and (6) apply to the hearing. 2006, c. 34, s. 15 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (16) is repealed and the following substituted:

Hearing

(16) If the Director required the entry of a caution under subsection (15), the Director may hold a hearing before making any rectification of the register under subsection (13) and subsections 10 (4), (5) and (6) apply to the hearing. 2012, c. 8, Sched. 28, s. 37 (7).

See: 2012, c. 8, Sched. 28, ss. 37 (7), 98.

Power to summon witnesses

(17) For the purposes of the hearing, the Director of Titles may exercise the powers described in subsections 20 (1), (2) and (3) with necessary modifications and the reference in subsection 20 (1) to an applicant is deemed to be a reference to any party to the hearing. 2006, c. 34, s. 15 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (17) is amended by striking out "Director of Titles" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 37 (8), 98.

Same

(18) Subsections 20 (4) to (7) apply to the hearing with necessary modifications. 2006, c. 34, s. 15 (6).

Assistance

(19) The Director of Titles may, in the course of the hearing, require a party to the hearing to produce a document or record and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce information in any form, and the person shall produce the document or record or provide the assistance. 2006, c. 34, s. 15 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (19) is amended by striking out "Director of Titles" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 37 (8), 98.

Valuation of mining lands

58. (1) Where a person makes a claim upon The Land Titles Assurance Fund for compensation in respect of land patented as mining land or in respect of land the chief value of which consists in the ores, mines or minerals therein and it appears that the person is entitled to recover in respect of the land or of some interest therein, in determining the amount of compensation to be paid to the person, the entire value of the land shall not be taken at a greater sum than twice the amount that was paid for the original grant from the Crown. R.S.O. 1990, c. L.5, s. 58 (1).

Apportionment proportionately

(2) Where the amount that was paid for the original grant from the Crown was paid in respect of other land in addition to that for which a claim is so made without it appearing what amount was paid in respect of the particular parcel of land with reference to which the claim is made, the amount so paid, or the portion thereof as to which the fact may not appear to be otherwise, shall be deemed to have been paid proportionately in accordance with the acreage or other superficial content of the whole parcel or of the various parcels in respect of which the amount was paid. R.S.O. 1990, c. L.5, s. 58 (2); 2006, c. 34, s. 15 (7).

No compensation

59. (1) No person is entitled to recover out of the Assurance Fund any compensation,

when person first registered could have conveyed good title to purchaser

(a) where the claim is founded upon a right existing at the time of the first registration of the land and the state of the title of the land at that time was such that the person who was first registered, or the person on whose nomination or

authorization the registration was made, by a duly registered conveyance could have conferred, as against the claimant, a valid title to a purchaser in good faith for valuable consideration without notice of any defect in the title, and no sufficient caution had been registered and was in force when the application for first registration was made or a patent was forwarded for registration and the land registrar had not actual notice of the defect prior to the first registration;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by striking out "the land registrar had not actual notice" and substituting "the Director did not have actual notice". See: 2012, c. 8, Sched. 28, ss. 38 (1), 98.

where claimant had notice of registration proceeding

- (b) where the claimant, by direction of the land registrar or in accordance with the practice of his or her office, had been served with a notice of the proceeding being had in that office, whether the proceeding was commenced prior or subsequent to first registration, and failed to act in accordance with the requirements of the notice or if the land registrar or the Director of Titles had adjudicated against the claimant and the claimant had failed to prosecute successfully an appeal against the decision;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed and the following substituted:

where claimant had notice of registration proceeding

- (b) where the claimant had been served with a notice of a proceeding, whether the proceeding was commenced prior or subsequent to first registration, and,
- (i) the claimant has failed to act in accordance with the requirements of the notice, or
 - (ii) the claimant has acted in accordance with the requirements of the notice, the Director has adjudicated against the claimant and the claimant has failed to prosecute successfully an appeal against the adjudication;

See: 2012, c. 8, Sched. 28, ss. 38 (2), 98.

where claimant's negligence has caused loss

- (c) where the claimant has caused or substantially contributed to the loss by the claimant's act, neglect or default, and the omission to register a sufficient caution, notice, inhibition or restriction to protect a mortgage by deposit or other equitable interest or any unregistered right, or other equitable interest or any unregistered interest or equity created under section 71 or otherwise shall be deemed neglect within the meaning of this clause;

fraud

- (d) if the person knowingly participates or colludes in a fraud with respect to the interest or right on which the claim is founded;

subrogated claim

- (e) if the interest or right on which the claim is founded is derived on or after October 19, 2006 from a subrogated claim; or

claim of insurer

- (f) if the person makes the claim, on or after October 19, 2006, on behalf of an insurer of the person. R.S.O. 1990, c. L.5, s. 59 (1); 2006, c. 34, s. 15 (7, 8); 2009, c. 33, Sched. 17, s. 5 (16).

Definition

(2) In this section,

"claimant" includes the person actually making the claim and any person through whom the person claims who the person alleges was wrongfully deprived of land or of some estate or interest therein. R.S.O. 1990, c. L.5, s. 59 (2); 2006, c. 34, s. 15 (7).

Inspection

59.1 (1) In this section,

"inspector" means the Director of Titles or a person designated in writing by that Director when exercising any of the powers set out in this section. 2006, c. 34, s. 15 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "inspector" is repealed and the following substituted:

"inspector" means the Director or a person designated in writing by the Director when exercising any of the powers set out in this section.

See: 2012, c. 8, Sched. 28, ss. 39, 98.

Powers

(2) Upon having a reasonable belief that a person described in subsection (3) is likely to have information relevant to determining whether a payment of compensation out of The Land Titles Assurance Fund is authorized under subsection 57 (4.1), an inspector may,

- (a) require that the person produce for inspection and examination, in a readable form, any documents and records that may contain the information;
- (b) require that the person provide whatever assistance is reasonably necessary to produce documents and records in a readable form when required to do so under clause (a), including using any data storage, processing or retrieval device or system for that purpose;
- (c) upon giving a receipt for them, copy any of the things that the person is required to produce under clause (a) if the inspector returns the things promptly to the person who produced them; and
- (d) require that the person answer all inquiries relevant to the information. 2006, c. 34, s. 15 (9).

Persons being inspected

(3) The persons who are subject to an inspection under subsection (2) are every person who is registered as the owner of land or some estate or interest in land with respect to which an application for compensation from The Land Titles Assurance Fund is made under subsection 57 (4.1) or who was registered as such at the time the claim for compensation arose. 2006, c. 34, s. 15 (9).

Identification

(4) An inspector shall produce, on request, evidence of the authority to carry out an inspection. 2006, c. 34, s. 15 (9).

No obstruction

- (5) No person shall,
 - (a) obstruct an inspector conducting an inspection;
 - (b) withhold from the inspector or conceal information that is relevant to the inspection; or
 - (c) withhold from the inspector or conceal, alter or destroy any documents or records that are relevant to the inspection. 2006, c. 34, s. 15 (9).

Admissibility of copies

(6) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 34, s. 15 (9).

Offence

59.2 A person who contravenes subsection 59.1 (5) is guilty of an offence and, on conviction, is liable to,

- (a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day, or both, if the person is an individual; and
- (b) a fine of not more than \$250,000, if the person is a corporation. 2006, c. 34, s. 15 (9).

PART VI PART OWNERS

Registration of part owners

60. (1) Any two or more persons entitled concurrently or successively, or partly in one mode and partly in another, to such estates, rights or interests in land as together make up such an estate as would, if vested in one person, entitle the person to be registered as owner of the land may apply to the land registrar to be registered as joint owners in the same manner and with the same incidents, so far as circumstances admit, in and with which it is in this Act declared that an individual owner may be registered. R.S.O. 1990, c. L.5, s. 60 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 40, 98.

Entry

(2) Where several persons are so registered as owners, the entry may, if the parties so desire, define the estates, rights and interests, other than trust estates, rights and interests, to which the owners are respectively entitled, and such entry may be

made either upon first registration or subsequently in case the estates, rights or interests so arise. R.S.O. 1990, c. L.5, s. 60 (2).

Undivided shares

61. (1) No person shall be registered as owner of an undivided share in freehold or leasehold land or of a charge apart from the other share or shares. R.S.O. 1990, c. L.5, s. 61 (1).

Rights of part owner

(2) Where the extent of a co-owner's interest is not shown on the register, the co-owner may,

- (a) transfer or charge a specified share in the land or transfer a share in the charge, as the case may be, if the land registrar is satisfied, by an affidavit of all co-owners setting out the percentage or fractional interest that belongs to the transferor or chargor, that the transferor or chargor has a sufficient interest to transfer or charge such share; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is repealed and the following substituted:

- (a) transfer or charge a specified share in the land or transfer a share in the charge, as the case may be, if the Director is satisfied, by an affidavit of all co-owners or other evidence setting out the percentage or fractional interest that belongs to the transferor or chargor, that the transferor or chargor has a sufficient interest to transfer or charge the share; or

See: 2012, c. 8, Sched. 28, ss. 41, 98.

(b) transfer or charge all of the co-owner's unspecified share. R.S.O. 1990, c. L.5, s. 61 (2).

Trusts not to be entered

62. (1) A notice of an express, implied or constructive trust shall not be entered on the register or received for registration. R.S.O. 1990, c. L.5, s. 62 (1).

Description of owner as a trustee

(2) Describing the owner of freehold or leasehold land or of a charge as a trustee, whether the beneficiary or object of the trust is or is not mentioned, shall be deemed not to be a notice of a trust within the meaning of this section, nor shall such description impose upon any person dealing with the owner the duty of making any inquiry as to the power of the owner in respect of the land or charge or the money secured by the charge, or otherwise, but, subject to the registration of any caution or inhibition, the owner may deal with the land or charge as if such description had not been inserted. R.S.O. 1990, c. L.5, s. 62 (2).

Owners described as trustees to be joint tenants

(3) Where two or more owners are described as trustees, the property shall be held to be vested in them as joint tenants unless the contrary is expressly stated. R.S.O. 1990, c. L.5, s. 62 (3).

Saving

(4) Nothing in this section prevents the registration of a charge given for the purpose of securing bonds or debentures of a corporation, but the registration of such a charge is not a guarantee that the steps necessary to render the charge valid have been duly taken. R.S.O. 1990, c. L.5, s. 62 (4).

Nature of title of registered fiduciary owners

63. Any person registered in the place of a deceased owner or to whom a patent is issued as executor administrator or estate trustee or in any representative capacity shall hold the land or charge, in respect of which the person is registered, upon the trusts and for the purposes to which the same is applicable by law and subject to any unregistered estates, rights, interests or equities subject to which the deceased owner held the same, but otherwise in all respects, and in particular as respects any registered dealings with such land or charge, the person shall be in the same position as if the person had taken the land or charge under a transfer for a valuable consideration. R.S.O. 1990, c. L.5, s. 63; 1998, c. 18, Sched. E, s. 126.

Registration of certain trustees

Registration of trustees under *Religious Organizations' Lands Act*

64. (1) Where registered land or an interest therein is acquired by trustees under the *Religious Organizations' Lands Act*, it shall be registered in the name of the religious organization without setting out the purposes or trusts on which the land or interest is held. R.S.O. 1990, c. L.5, s. 64 (1).

Registration of other trustees

(2) A person who has been appointed as a trustee under the *Bankruptcy and Insolvency Act (Canada)* or under any other Act of Canada or Ontario or by the court, upon proof of entitlement satisfactory to the land registrar, may be registered as the

owner of registered land or of an interest therein, and the person may transfer the same upon proof of compliance with the Act or order under which the person was appointed. R.S.O. 1990, c. L.5, s. 64 (2); 2002, c. 18, Sched. E, s. 6 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "upon proof of entitlement satisfactory to the land registrar, may be registered" and substituting "may, upon proof of entitlement satisfactory to the Director, be registered". See: 2012, c. 8, Sched. 28, ss. 42, 98.

Trustees of pension funds

(3) Where a charge is made or transferred to the trustee or trustees of a registered pension fund or plan within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada), and the charge or transfer of charge has attached thereto a statement made by one of the trustees or a solicitor deposing that the fund or plan is so registered, the chargee or transferee may be described in the charge or transfer of charge as the trustee or trustees, naming the fund or plan, and the individual names of the trustee or trustees are not required. R.S.O. 1990, c. L.5, s. 64 (3); 1998, c. 18, Sched. E, s. 127 (1).

Idem

(4) A transfer or cessation of a charge made by the trustee or trustees mentioned in subsection (3) shall not be registered unless there is attached thereto a statement made by the trustee or, where there is more than one trustee, by one of them or by the solicitor for the trustee or trustees, deposing that the signing trustee is, or trustees are, authorized to execute the transfer or cessation. R.S.O. 1990, c. L.5, s. 64 (4); 1998, c. 18, Sched. E, s. 127 (2).

Special entry in certain cases

65. (1) Upon the registration of two or more persons as owners of the same land or of the same charge, an entry may, with their consent, be made on the register to the effect that, when the number of such owners is reduced below a certain specified number, no registered disposition of the land or charge shall be made except under the order of the court. R.S.O. 1990, c. L.5, s. 65 (1).

No survivorship

(2) In such a case, the words "No Survivorship" or "sans gain de survie" in the entry mean that, if any one of the owners should die, no registered disposition of the land or charge shall be made except under order of the court. R.S.O. 1990, c. L.5, s. 65 (2).

PART VII SUBSEQUENT REGISTRATIONS

GENERAL

Right of transferees and chargees to registration

66. Every transfer or charge signed by a registered owner, or others claiming by transfer through or under a registered owner, purporting to transfer or charge freehold or leasehold land, or an interest therein, capable of being registered, or purporting to transfer a charge, shall, until cut out by a conflicting registration, confer upon the person intended to take under the transfer or charge a right to be registered as the owner of the land or charge and, where a person applies to be registered under this section, the land registrar may, either forthwith or after requiring such notices to be given as the land registrar considers expedient, register the applicant as owner, subject to such encumbrances, if any, as the condition of the title requires, although the transfer or charge has been executed or bears date prior to the entry of the transferor or chargor as the owner of the land or charge. R.S.O. 1990, c. L.5, s. 66.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 66 is repealed and the following substituted:

Right of transferees and chargees to registration

66. (1) Every transfer or charge signed by a registered owner, or others claiming by transfer through or under a registered owner, purporting to transfer or charge freehold or leasehold land, or an interest in that land, capable of being registered, or purporting to transfer a charge, shall, until cut out by a conflicting registration, confer upon the person intended to take, under the transfer or charge, a right to be registered as the owner of the land or charge. 2012, c. 8, Sched. 28, s. 43.

Registration

(2) If the Director considers it expedient, a person who applies to be registered under this section may be registered as owner forthwith or after giving the notice that the Director requires, subject to the encumbrances, if any, that the condition of the title requires, although the transfer or charge has been executed or bears a date that predates the entry of the transferor or chargor as the owner of the land or charge. 2012, c. 8, Sched. 28, s. 43.

See: 2012, c. 8, Sched. 28, ss. 43, 98.

Description of registered owner

67. Subject to section 64, no person, other than a corporation, may be shown as the registered owner of land or a charge unless the person is described by surname and by the first given name in full, followed by another given name, if any, in full. R.S.O. 1990, c. L.5, s. 67.

Dealings with registered land

68. (1) No person, other than the registered owner, is entitled to transfer or charge registered freehold or leasehold land by a registered disposition. R.S.O. 1990, c. L.5, s. 68 (1).

Unregistered estates, etc.

(2) Subject to the maintenance of the estate and right of the registered owner, a person having a sufficient estate or interest in the land may create estates, rights, interests and equities in the same manner as the person might do if the land were not registered. R.S.O. 1990, c. L.5, s. 68 (2).

Meaning of "vest" or "belong"

69. (1) Where by an order of a court of competent jurisdiction or where by virtue of the operation of an Act of Canada or Ontario registered land or any interest therein is stated by the order or Act to vest, be vested or become vested in, or belong to, the Crown in right of Canada or Ontario or any person other than the registered owner of the land, the registered owner shall be deemed for the purposes of this Act to remain the owner thereof,

(a) until an application to be registered as owner is made by or on behalf of the Crown or other person in or to whom the land is stated to be vested or to belong; or

(b) until the land is transferred to the Crown or person by the registered owner,

as the case may be, in accordance with the order or Act. R.S.O. 1990, c. L.5, s. 69 (1).

Exception

(2) Subsection (1) does not apply to,

(a) an expropriation plan registered in accordance with the *Expropriations Act*; or

(b) a plan registered in accordance with the *Public Transportation and Highway Improvement Act* in the highways register mentioned in subsection 72 (2) of this Act. R.S.O. 1990, c. L.5, s. 69 (2).

Power of attorney authorized

70. (1) A person may, under a power of attorney, authorize another person to act for that person in respect of any land or interest therein under this Act. R.S.O. 1990, c. L.5, s. 70 (1).

Registration

(2) A power of attorney or a notarial or certified copy of it may be registered in the prescribed manner. 1998, c. 18, Sched. E, s. 128.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "in the prescribed manner" at the end and substituting "in the manner specified by the Director". See: 2012, c. 8, Sched. 28, ss. 44 (1), 98.

Revocation

(3) No registered power of attorney shall be deemed to be revoked until a revocation thereof is registered or evidence is filed with the land registrar showing that it is no longer in force. R.S.O. 1990, c. L.5, s. 70 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "filed with the land registrar" and substituting "registered". See: 2012, c. 8, Sched. 28, ss. 44 (2), 98.

Protection of unregistered estates

71. (1) Any person entitled to or interested in any unregistered estates, rights, interests or equities in registered land may protect the same from being impaired by any act of the registered owner by entering on the register such notices, cautions, inhibitions or other restrictions as are authorized by this Act or by the Director of Titles. R.S.O. 1990, c. L.5, s. 71 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 45, 98.

Agreement of purchase and sale

(1.1) An agreement of purchase and sale or an assignment of that agreement shall not be registered, but a person claiming an interest in registered land under that agreement may register a caution under this section on the terms specified by the Director of Titles. 1998, c. 18, Sched. E, s. 129.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1.1) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 45, 98.

Effect of registration

(2) Where a notice, caution, inhibition or restriction is registered, every registered owner of the land and every person deriving title through the registered owner, excepting owners of encumbrances registered prior to the registration of such notice, caution, inhibition or restriction, shall be deemed to be affected with notice of any unregistered estate, right, interest or equity referred to therein. R.S.O. 1990, c. L.5, s. 71 (2).

Note: A caution registered under section 71 or a predecessor of that section before June 16, 1999 ceases to have effect five years from June 16, 1999, if the date that the caution ceases to have effect is not specified in the caution or by subsection 128 (4) of this Act, as it read immediately before June 16, 1999, or if there is a date specified in the caution or by subsection 128 (4) of this Act, as it read immediately before June 16, 1999, the earlier of that date and five years from the date of registration of the caution. See: 1998, c. 18, Sched. E, s. 151 (2).

Effect of unregistered instruments

72. (1) No person, other than the parties thereto, shall be deemed to have any notice of the contents of any instruments, other than those mentioned in the existing register of title of the parcel of land or that have been duly entered in the records of the office kept for the entry of instruments received or are in course of entry. R.S.O. 1990, c. L.5, s. 72 (1).

Highways register

(2) For the purposes of subsection (1), the highways register provided for in the regulations shall be deemed to be a record kept for the entry of instruments. R.S.O. 1990, c. L.5, s. 72 (2).

Trans-Canada Pipe Line register

(3) Subject to the regulations, the Trans-Canada Pipe Line register provided for in the regulations shall be deemed, for the purposes of this Act, to be a register of the title of land or interests therein, including easements, owned by TransCanada PipeLines Limited. R.S.O. 1990, c. L.5, s. 72 (3).

Guardian

73. (1) The guardian of the property of a minor or of a mentally incapable person may make an application, give consent, do an act or be party to a proceeding under this Act if the minor or mentally incapable person could have done so if free from disability. 1992, c. 32, s. 18.

Same

(2) The guardian shall represent the minor or mentally incapable person for the purposes of this Act. 1992, c. 32, s. 18.

Same

(3) If a minor or a mentally incapable person has no guardian of property, the Children's Lawyer has power to act under subsections (1) and (2), or the land registrar may appoint a person with power to act under those subsections. 1992, c. 32, s. 18; 1994, c. 27, s. 43 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

If no guardian

(3) If a minor or a mentally incapable person has no guardian of property, the Children's Lawyer or a person appointed by a court has power to act under subsections (1) and (2). 2012, c. 8, Sched. 28, s. 46.

See: 2012, c. 8, Sched. 28, ss. 46, 98.

Same

(4) If a person yet unborn is interested, subsection (3) applies, with necessary modifications. 1992, c. 32, s. 18.

Submission of case to Director of Titles where land registrar in doubt

74. Where, on an application for the registration of an instrument after first registration or for the registration of a transmission, the land registrar is unable to come to a clear conclusion as to the action that he or she should take, the land registrar shall delay making the required entry until he or she has stated the facts to the Director of Titles for his or her opinion, and in submitting the case the land registrar shall state his or her own view and the reasons therefor. R.S.O. 1990, c. L.5, s. 74.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 74 is repealed. See: 2012, c. 8, Sched. 28, ss. 47, 98.

Amendment of register

75. Upon the application of the registered owner or the owner of a registered interest in the registered owner's title or a notice, caution, inhibition or restriction in the title that is registered under section 71, the land registrar may amend any entry

Order of registration

(2) Subject to the regulations, an instrument received for registration shall be registered in the order of time in which it is so received unless, before registration is completed,

- (a) the applicant withdraws it; or
- (b) the Director notifies the parties or their solicitors within 21 days after it is received that,
 - (i) it contains a material error, omission or deficiency,
 - (ii) there is evidence lacking that the Director requires, or
 - (iii) the registration is declined for any other reason. 2012, c. 8, Sched. 28, s. 51 (1).

Notice

(2.1) The Director shall allow a period of not less than seven and not more than 30 days from the date of the notice for correction of the error, omission or deficiency or for furnishing evidence. 2012, c. 8, Sched. 28, s. 51 (1).

Correction made

(2.2) If the error, omission or deficiency is corrected or evidence is furnished within the time allowed by the notice, the instrument has priority as if it had been correct in the first instance. 2012, c. 8, Sched. 28, s. 51 (1).

No correction made

(2.3) If, within the time allowed by the notice, the error, omission or deficiency is not corrected or evidence is not furnished or if the person desiring registration fails to appeal successfully from the decision, the Director may proceed with other registrations affecting the land as if the instrument had not been presented for registration, and the Director shall be deemed not to be affected with notice of the contents of the instrument. 2012, c. 8, Sched. 28, s. 51 (1).

See: 2012, c. 8, Sched. 28, ss. 51 (1), 98.

When registration complete

(3) Registration of an instrument is complete when the instrument and its entry in the proper register are certified in the prescribed manner by the land registrar, deputy or assistant deputy land registrar, and the time of receipt of the instrument shall be deemed to be the time of its registration. R.S.O. 1990, c. L.5, s. 78 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "in the prescribed manner by the land registrar, deputy or assistant deputy land registrar" and substituting "in the manner specified by the Director". See: 2012, c. 8, Sched. 28, ss. 51 (2), 98.

Effect of registration

(4) When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register. R.S.O. 1990, c. L.5, s. 78 (4).

Exception

(4.1) Subsection (4) does not apply to a fraudulent instrument that is registered on or after October 19, 2006. 2006, c. 34, s. 15 (10).

Non-fraudulent instruments

(4.2) Nothing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument. 2006, c. 34, s. 15 (10).

Priorities

(5) Subject to any entry to the contrary in the register and subject to this Act, instruments registered in respect of or affecting the same estate or interest in the same parcel of registered land as between themselves rank according to the order in which they are entered in the register and not according to the order in which they were created, and, despite any express, implied or constructive notice, are entitled to priority according to the time of registration. R.S.O. 1990, c. L.5, s. 78 (5).

Postponement of registered rights

(6) Upon registration of an instrument in the prescribed form, the rights of priority acquired by registration may be postponed to rights acquired or claimed under another registered instrument. R.S.O. 1990, c. L.5, s. 78 (6).

in the register of the title to reflect the effect of other statutes, orders of a court, a change in the name of owner or other changes that have occurred in fact. 1999, c. 12, Sched. F, s. 27.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 75 is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 48, 98.

Proof of compliance with other statutes

76. In respect of the first registration of land or any subsequent registration of an instrument under this Act, the land registrar may require such proof as he or she considers sufficient, or as is specified by the Director of Titles, of compliance with any Act of Canada or Ontario that if not complied with would affect the title of the first registered owner or the title or interest of the person taking under the subsequent instrument. R.S.O. 1990, c. L.5, s. 76; 1998, c. 18, Sched. E, s. 130.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 76 is amended by striking out "the land registrar may require such proof as he or she considers sufficient, or as is specified by the Director of Titles, of compliance" and substituting "the Director may require proof of compliance". See: 2012, c. 8, Sched. 28, ss. 49, 98.

Instruments deemed applications to amend register

77. (1) Except as otherwise provided by this Act, every instrument presented for registration by which, when registration thereof is completed, an interest in registered land is created, transferred or terminated shall be deemed to be an application to the land registrar to amend the registered title of the land mentioned therein. R.S.O. 1990, c. L.5, s. 77 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "to the land registrar". See: 2012, c. 8, Sched. 28, ss. 50, 98.

Idem

(2) A plan, certificate, order or by-law made under an Act of Canada or Ontario, which when registered has the effect of transferring, vesting or forfeiting registered land or an interest therein, shall be deemed to be an instrument for the purposes of subsection (1). R.S.O. 1990, c. L.5, s. 77 (2).

Certain instruments not within subs. (1)

(3) An agreement or lease or other instrument in respect of which no provision is made by this Act for registration but which is filed in support of or mentioned in a caution, notice of lease or other notice authorized by this Act shall be deemed not to be registered nor to be an instrument for the purposes of subsection (1). R.S.O. 1990, c. L.5, s. 77 (3).

Registration

Time of receipt to be noted

78. (1) The day, hour and minute of the receipt of each instrument presented for registration and of each copy of a writ or lien received under section 136 shall be noted thereon by the officer or clerk receiving the instrument or copy. R.S.O. 1990, c. L.5, s. 78 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Registration

(1) The day, hour and minute of the receipt of each instrument presented for registration and of each copy of a writ or lien received under section 136 shall be noted on it by the person receiving the instrument or copy for registration. 2012, c. 8, Sched. 28, s. 51 (1).

See: 2012, c. 8, Sched. 28, ss. 51 (1), 98.

Order of registration

(2) Subject to the regulations, an instrument received for registration shall be registered in the order of time in which it is so received, unless before registration is completed it is withdrawn or the land registrar decides that it contains a material error, omission or deficiency or that there is evidence lacking that the land registrar considers requisite or declines registration for any other reason, and notifies the parties or their solicitors accordingly within twenty-one days after being so received and allows a period of time not less than seven and not more than thirty days from the date of such notification for correction of the error, omission or deficiency or for furnishing evidence and, when the error, omission or deficiency is corrected or evidence furnished within the time allowed, the instrument has priority as if it had been correct in the first instance, but, if the error, omission or deficiency is not corrected or if evidence is not furnished within the time allowed or if the person desiring registration fails to appeal successfully from the decision, the land registrar may proceed with other registrations affecting the land as if the instrument had not been presented for registration, and the land registrar shall be deemed not to be affected with notice of the contents of the instrument. R.S.O. 1990, c. L.5, s. 78 (2); 1993, c. 27, Sched.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is amended by striking out "in the prescribed form" and substituting "in the required form". See: 2012, c. 8, Sched. 28, ss. 51 (3), 98.

79. REPEALED: 1998, c. 18, Sched. E, s. 132.

Right to registration

80. The land registrar may enter as owner of freehold or leasehold land or of a charge any person who is entitled to the land or charge through the death of the owner, although the deceased had not been registered as owner, or any person who is entitled by virtue of the exercise of a power conferred by a statute, will, deed or other instrument, whether the person so entitled claims directly from the deceased or directly under the power, or through any other person entitled by virtue of the death or power or through a succession of transfers or transmissions. R.S.O. 1990, c. L.5, s. 80.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 80 is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 52, 98.

Land registrar may refuse registration or refrain from recording in certain cases

81. The land registrar may,

- (a) refuse to accept for registration an instrument,
 - (i) that is wholly or partly illegible or unsuitable for microfilming, or
 - (ii) that contains or has attached to it material that does not, in the land registrar's opinion, affect or relate to an interest in land; and
- (b) refrain from recording a part of a registered instrument where the part of the instrument does not, in the land registrar's opinion, affect or relate to an interest in land. R.S.O. 1990, c. L.5, s. 81; 1998, c. 18, Sched. E, s. 133.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 81 is repealed and the following substituted:

No registration or recording in certain cases

81. (1) An instrument may be refused for registration if,

- (a) it is wholly or partly illegible or unsuitable for recording in an electronic format; or
- (b) in the opinion of the Director, it contains or has attached to it material that does not affect or relate to an interest in land. 2012, c. 8, Sched. 28, s. 53.

Same, part of an instrument

(2) A part of a registered instrument may be refused for registration if the part does not, in the opinion of the Director, affect or relate to an interest in land. 2012, c. 8, Sched. 28, s. 53.

See: 2012, c. 8, Sched. 28, ss. 53, 98.

Registration of instruments not in prescribed form

82. Where an instrument made in accordance with the forms in use or sufficient to pass an estate or interest in land under the *Registry Act* deals with land under this Act, the land registrar may, in his or her discretion, register it under this Act and, when so registered, it has the same effect as if made in the prescribed form. R.S.O. 1990, c. L.5, s. 82.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 82 is repealed and the following substituted:

Registration of instruments not in required form

82. If an instrument made in accordance with the forms in use or sufficient to pass an estate or interest in land under the *Registry Act* deals with land under this Act, it may, in the discretion of the Director, be accepted for registration under this Act and, when so registered, it has the same effect as if made in the required form. 2012, c. 8, Sched. 28, s. 53.

See: 2012, c. 8, Sched. 28, ss. 53, 98.

Prohibitions on taking affidavits

83. No person authorized to take affidavits shall take an affidavit,

- (a) as to the execution of an instrument to which he or she is a party; or
- (b) as to the execution of an instrument unless the witness has subscribed on the instrument the witness' name in his or her handwriting as witness. R.S.O. 1990, c. L.5, s. 83.

Registrations in languages other than English

84. Where an instrument, application or related attachment is written wholly or in part in a language other than English there shall be produced with the instrument, application or related attachment a translation into English, together with an affidavit by the translator stating that he or she understands both languages and has carefully compared the translation with the original and that the translation is in all respects a true and correct translation. R.S.O. 1990, c. L.5, s. 84.

Registration of instruments and applications in French language

85. (1) Despite section 84, where an instrument, application or related attachment is in a prescribed form, the instrument or application may be registered or deposited, if,

- (a) the instrument or application affects land in a land titles division or part thereof that is designated by regulation; and
- (b) the instrument or application is otherwise acceptable for registration or deposit. R.S.O. 1990, c. L.5, s. 85 (1).

Regulations

- (2) The Minister may make regulations,
 - (a) prescribing the forms of instruments, applications and related attachments for the purpose of this section;
 - (b) prescribing a lexicon of French-English terms to be used in connection with the prescribed forms of instruments, applications and related attachments and deeming the corresponding forms of expression in the lexicon to have the same effect in law;
 - (c) designating land titles divisions or parts thereof for the purpose of this section;
 - (d) prescribing terms and conditions for the registration and deposit of instruments and applications under subsection (1);
 - (e) designating any Act for the purpose of the definition of "prescribed form" in subsection (3). R.S.O. 1990, c. L.5, s. 85 (2); 1998, c. 18, Sched. E, s. 134 (1).

Note: The Lieutenant Governor in Council may by regulation revoke regulations made under subsection (2), as it read immediately before December 18, 1998, if the Minister makes a regulation under subsection (2), as amended by the Statutes of Ontario, 1998, chapter 18, Schedule E, subsection 134 (1), that is inconsistent with those regulations. See: 1998, c. 18, Sched. E, s. 134 (2).

Definitions

(3) In this section,

"instrument" includes any plan submitted for registration or deposit under this Act; ("acte")

"prescribed form" means a form prescribed by a regulation made under this section or under any Act designated by a regulation made under clause (2) (e). ("formule prescrite") R.S.O. 1990, c. L.5, s. 85 (3).

TRANSFERS

Transfer of land

86. (1) A registered owner may transfer land or any part thereof in the prescribed manner. R.S.O. 1990, c. L.5, s. 86 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "thereof in the prescribed manner" at the end and substituting "of land in the manner specified by the Director". See: 2012, c. 8, Sched. 28, ss. 54 (1), 98.

Registering transferee as owner

(2) The transfer shall be completed by the land registrar entering on the register the transferee as owner of the land transferred, and the transferor shall be deemed to remain owner of the land until the registration of the transfer has been completed in accordance with this Act. R.S.O. 1990, c. L.5, s. 86 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "by the land registrar entering on the register" and substituting "by the entry on the register of". See: 2012, c. 8, Sched. 28, ss. 54 (2), 98.

Estate of transferee for valuable consideration of land with absolute title

87. A transfer for valuable consideration of land registered with an absolute title, when registered, confers on the transferee an estate in fee simple in the land transferred, together with all rights, privileges and appurtenances, subject to,

- (a) the encumbrances, if any, entered or noted on the register; and
- (b) the liabilities, rights and interests, if any, as are declared for the purposes of this Act not to be encumbrances, unless the contrary is expressed on the register,

and as to such rights, privileges and appurtenances, subject also to any qualifications, limitation or encumbrance to which the same are expressed to be subject in the register, or where such rights, privileges and appurtenances are not registered, then

subject to any qualification, limitation or encumbrance to which the same are subject at the time of the transfer, but free from all estates and interests whatsoever, including estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario. R.S.O. 1990, c. L.5, s. 87.

Estate of transferee for valuable consideration of land with qualified title

88. A transfer for valuable consideration of land registered with a qualified title, when registered, has the same effect as a transfer for valuable consideration of the same land registered with an absolute title, except that such transfer does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1990, c. L.5, s. 88.

Estate of transferee for valuable consideration of land with possessory title

89. A transfer for valuable consideration of land registered with a possessory title does not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered owner, and subsisting, or capable of arising, at the time of the first registration, but otherwise, when registered, has the same effect as a transfer for valuable consideration of the same land registered with an absolute title. R.S.O. 1990, c. L.5, s. 89.

Estate of voluntary transferee of land

90. A transfer of registered land, made without valuable consideration, is subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same, but otherwise, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, has the same effect as a transfer of the same land for valuable consideration. R.S.O. 1990, c. L.5, s. 90.

Purchasers for value not affected by omission to send notices

91. A purchaser for valuable consideration when registered is not affected by the omission to send any notice directed to be given by this Act, or by the non-receipt thereof. R.S.O. 1990, c. L.5, s. 91.

Transfer to uses

92. (1) In this section,

“owner to uses” means a transferee registered under a transfer to uses; (“propriétaire du droit d’usage”)

“transfer to uses” means a transfer expressed to be given to such uses as the transferee may appoint by transfer, charge or will; (“cession accordant un droit d’usage”)

“unencumbered interest” means the interest that an owner to uses is capable of appointing. (“droit non grevé”) R.S.O. 1990, c. L.5, s. 92 (1).

Transfer to uses may be registered

(2) A transfer to uses may be registered. R.S.O. 1990, c. L.5, s. 92 (2).

Exercise of power of appointment

(3) An owner to uses may exercise the owner’s power of appointment by a transfer or charge in the prescribed form or by his or her will. R.S.O. 1990, c. L.5, s. 92 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out “in the prescribed form” and substituting “in the required form”. See: 2012, c. 8, Sched. 28, ss. 55, 98.

Charge does not exhaust power

(4) An appointment by way of charge by an owner to uses does not exhaust the owner’s power of appointment. R.S.O. 1990, c. L.5, s. 92 (4).

Effect of cessation of charge

(5) Despite the registration of a cessation of a charge,

(a) that was made by way of appointment by the owner to uses; or

(b) to which the land was subject when the person became the owner to uses,

the owner to uses may exercise the owner’s power of appointment as though the charge had not been made. R.S.O. 1990, c. L.5, s. 92 (5).

Effect of default of appointment

(6) An owner to uses who dies without having exercised the owner’s power of appointment by transfer, charge or will shall be deemed to have appointed the land by way of transfer to himself or herself immediately before his or her death. R.S.O. 1990, c. L.5, s. 92 (6).

Idem

(7) An owner to uses who has appointed the land or a part thereof in respect of which he or she has a power of appointment by way of charge and who dies without having appointed by way of transfer or will shall be deemed to have appointed the unencumbered interest in the land by the way of transfer to himself or herself immediately before death. R.S.O. 1990, c. L.5, s. 92 (7).

CHARGES AND ENCUMBRANCES

Charges

93. (1) A registered owner may in the prescribed manner charge the land with the payment at an appointed time of any principal sum of money either with or without interest or as security for any other purpose and with or without a power of sale. R.S.O. 1990, c. L.5, s. 93 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "in the prescribed manner" and substituting "in the required manner". See: 2012, c. 8, Sched. 28, ss. 56 (1), 98.

Statement of principal

(2) A charge that secures the payment of money shall state the amount of the principal sum that it secures. 1998, c. 18, Sched. E, s. 135 (1).

Effect of charge when registered

(3) The charge, when registered, confers upon the chargee a charge upon the interest of the chargor as appearing in the register subject to the encumbrances and qualifications to which the chargor's interest is subject, but free from any unregistered interest in the land. R.S.O. 1990, c. L.5, s. 93 (3).

Where advances under registered charge to have priority over subsequent charges

(4) A registered charge is, as against the chargor, the heirs, executors, administrators, estate trustees and assigns of the chargor and every other person claiming by, through or under the chargor, a security upon the land thereby charged to the extent of the money or money's worth actually advanced or supplied under the charge, not exceeding the amount for which the charge is expressed to be a security, although the money or money's worth, or some part thereof, was advanced or supplied after the registration of a transfer, charge or other instrument affecting the land charged, executed by the chargor, the heirs, executors, administrators or estate trustees of the chargor and registered subsequently to the first-mentioned charge, unless, before advancing or supplying the money or money's worth, the registered owner of the first-mentioned charge had actual notice of the execution and registration of such transfer, charge or other instrument, and the registration of such transfer, charge or other instrument after the registration of the first-mentioned charge does not constitute actual notice. R.S.O. 1990, c. L.5, s. 93 (4); 1998, c. 18, Sched. E, s. 135 (2).

Bond mortgage may be registered as charge upon authorization of parties

(5) An instrument in the nature of a deed of trust and mortgage that provides for the issuance of bonds or debentures may be registered as a charge upon the lands of the grantor, and the entry in the register shall state the aggregate principal sum and the rate of interest of such bonds or debentures. R.S.O. 1990, c. L.5, s. 93 (5); 1998, c. 18, Sched. E, s. 135 (3).

(6) REPEALED: 1998, c. 18, Sched. E, s. 135 (4).

(7) REPEALED: 1998, c. 18, Sched. E, s. 135 (4).

Cessation

(8) A charge registered under subsection (5) may be discharged by a cessation in the prescribed form. R.S.O. 1990, c. L.5, s. 93 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is amended by striking out "in the prescribed form" at the end and substituting "in the required form". See: 2012, c. 8, Sched. 28, ss. 56 (2), 98.

Debentures

(9) A charge in the form of a debenture or similar instrument shall not be registered unless the name of the person entitled to receive the money payable thereunder and to give a discharge thereof is set out in the instrument. R.S.O. 1990, c. L.5, s. 93 (9).

94. REPEALED: 1998, c. 18, Sched. E, s. 136 (1).

95. REPEALED: 1998, c. 18, Sched. E, s. 136 (1).

96. REPEALED: 1998, c. 18, Sched. E, s. 136 (1).

97. REPEALED: 1998, c. 18, Sched. E, s. 136 (1).

98. REPEALED: 1998, c. 18, Sched. E, s. 136 (1).

Note: Despite the repeal of sections 94 to 98, sections 94, 95, 96 and 97, as they read immediately before December 18, 1998, continue to apply to a charge of registered land that was executed before September 6, 1984, in the case of land in the County of Oxford as it existed on December 31, 1980, or before January 17, 1985, in the case of land elsewhere in Ontario. See: 1998, c. 18, Sched. E, s. 136 (2).

Remedy of owner of charge with power of sale

99. (1) Subject to the *Mortgages Act* the registered owner of a registered charge that contains a power of sale, upon registering the evidence specified by the Director of Titles, may sell and transfer the interest in the land or any part thereof that is the subject of the charge in accordance with the terms of the power in the same manner as if the registered owner of the registered charge were the registered owner of the land to the extent of such interest therein. R.S.O. 1990, c. L.5, s. 99 (1); 1998, c. 18, Sched. E, s. 137 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 57 (1), 98.

Compliance with *Mortgages Act*

(1.1) The evidence specified by the Director of Titles under subsection (1) is conclusive evidence of compliance with Part III of the *Mortgages Act* and, where applicable, with Part II of that Act and, upon registration of a transfer under that subsection, is sufficient to give a good title to the purchaser. 1998, c. 18, Sched. E, s. 137 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1.1) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 57 (1), 98.

Effect of sale by chargee

(2) Upon the registration of a transfer under subsection (1) and upon satisfactory evidence being produced, the land registrar may delete from the register the entry of an instrument or writ appearing to rank subsequent to the charge under which the land is sold, and thereupon the interest of every person claiming under such subsequent instrument or writ ceases to affect the land. R.S.O. 1990, c. L.5, s. 99 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Effect of sale by chargee

(2) Upon the registration of a transfer under subsection (1) and upon evidence satisfactory to the Director being produced, the entry of an instrument or writ appearing to rank subsequent to the charge under which the land is sold may be deleted from the register and in that case the interest of every person claiming under the subsequent instrument or writ ceases to affect the land. 2012, c. 8, Sched. 28, s. 57 (2).

See: 2012, c. 8, Sched. 28, ss. 57 (2), 98.

Dealings with registered charge

100. No person, other than the registered owner of a registered charge, is entitled to register a transfer of the charge, but, subject to the maintenance of the right of such owner, unregistered interests in a registered charge may be created in the same manner and with the same incidents, so far as the difference of the subject-matter admits, in and with which unregistered estates and interests may be created in registered land. R.S.O. 1990, c. L.5, s. 100.

Transfer of charges

101. (1) The registered owner of a registered charge may, in the prescribed manner, transfer the charge to another person as owner. R.S.O. 1990, c. L.5, s. 101 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "in the prescribed manner" and substituting "in the required manner". See: 2012, c. 8, Sched. 28, ss. 58 (1), 98.

Transfer completed by entry on register

(2) The transfer shall be completed by the land registrar entering on the register the transferee as owner of the charge transferred. R.S.O. 1990, c. L.5, s. 101 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Entry on register

(2) The transfer shall be completed by the entry on the register of the transferee as owner of the charge transferred. 2012, c. 8, Sched. 28, s. 58 (2).

See: 2012, c. 8, Sched. 28, ss. 58 (2), 98.

Effect of registration of transfer

(3) The transfer, when registered, confers upon the transferee the ownership of the charge free from any unregistered interests therein, and the transfer of part of the sum secured by a charge confers upon the transferee the ownership of such part free from any unregistered interests therein. R.S.O. 1990, c. L.5, s. 101 (3).

As between chargor and chargee

(4) Every transfer of a charge is subject to the state of account upon the charge between the chargor and the chargee. R.S.O. 1990, c. L.5, s. 101 (4).

Transferor deemed owner until registration

(5) The transferor shall be deemed to remain owner of the charge until registration of the transfer of charge has been completed in accordance with this Act. R.S.O. 1990, c. L.5, s. 101 (5).

Transfer of part of a charge

(6) The registered owner of a registered charge may transfer a part of the sum secured by the charge, and the part so transferred may be given priority over the remaining part, or may be deferred or may continue to rank equally with it as is stated in the transfer. R.S.O. 1990, c. L.5, s. 101 (6).

Transfer of charge may include provision to retransfer

(7) A charge of a charge shall not be registered, but a charge may be transferred subject to a provision to retransfer it to the transferor of the charge upon the payment of a sum of money either with or without interest, or upon the performance of any other condition, and, until the charge has been retransferred, the transferee of the charge shall for the purposes of this Act be deemed to be the absolute owner thereof. R.S.O. 1990, c. L.5, s. 101 (7).

Cessation of encumbrance

102. (1) The land registrar shall, on the requisition of the registered owner of land and on due proof of the satisfaction of a charge thereon, or may, on the requisition of the registered owner of a registered charge or of the personal representative of the registered owner of the registered charge or on the certificate of such registered owner or the personal representative of the registered owner of the satisfaction thereof, note on the register in the required manner the cessation of the charge, and thereupon the charge ceases. R.S.O. 1990, c. L.5, s. 102 (1); 1998, c. 18, Sched. E, s. 138.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Cessation of encumbrance

- (1) A cessation of a charge on land may be noted on the register in the required manner,
- (a) on the requisition of the registered owner of the land and upon proof satisfactory to the Director that the charge has been satisfied; or
 - (b) on the requisition of the registered owner of the charge or of the personal representative of that owner and upon proof satisfactory to the Director that the charge has been satisfied. 2012, c. 8, Sched. 28, s. 59.

Effect

(1.1) A charge on land ceases when a cessation of the charge is noted on the register. 2012, c. 8, Sched. 28, s. 59.

See: 2012, c. 8, Sched. 28, ss. 59, 98.

Other encumbrances

(2) The land registrar may in like manner and with the like effect note the cessation of any other encumbrance. R.S.O. 1990, c. L.5, s. 102 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Other encumbrances

(2) The cessation of any other encumbrance may be noted in like manner and with the like effect. 2012, c. 8, Sched. 28, s. 59.

See: 2012, c. 8, Sched. 28, ss. 59, 98.

Partial cessation of charge

(3) On the requisition or certificate of the registered owner of a registered charge or of the personal representative of such owner authorizing or certifying the discharge of any part of the land therefrom, the land registrar may note on the register the

discharge of such land from the charge, and thereupon the charge ceases as to the land discharged. R.S.O. 1990, c. L.5, s. 102 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Partial cessation of charge

(3) A cessation of a registered charge on land may be noted on the register for part of the land in the required manner on the requisition or certificate of the registered owner of the charge or of the personal representative of that owner authorizing or certifying the discharge of that part of the land from the charge and when the cessation is so noted, the charge ceases as to that part of the land. 2012, c. 8, Sched. 28, s. 59.

See: 2012, c. 8, Sched. 28, ss. 59, 98.

Death of person certifying to cessation of charge

(4) The death of the person who signed the requisition or certificate does not revoke or otherwise affect the discharge. R.S.O. 1990, c. L.5, s. 102 (4).

Complete or partial discharge of encumbrance existing at first registration

103. (1) Where, upon the first registration of land, notice of an encumbrance affecting the land has been entered on the register, the land registrar, on proof to his or her satisfaction of the discharge of the encumbrance, shall note in the required manner on the register the cessation of the encumbrance and thereupon the encumbrance ceases. R.S.O. 1990, c. L.5, s. 103 (1); 1998, c. 18, Sched. E, s. 139.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Cessation of encumbrance existing at first registration

(1) If, upon the first registration of land, notice of an encumbrance affecting the land has been entered on the register and proof satisfactory to the Director of the discharge of the encumbrance has been provided, the cessation of the encumbrance shall be noted in the required manner on the register and in that case the encumbrance ceases. 2012, c. 8, Sched. 28, s. 60.

See: 2012, c. 8, Sched. 28, ss. 60, 98.

Note of discharge on requisition of mortgagee

(2) On the requisition or certificate of a mortgagee whose mortgage was entered on the register on the first registration of the land, or the registered assignee thereof, or of the personal representative of such mortgagee or assignee, authorizing or certifying the discharge of the whole or a part of the land therefrom, or the discharge of the whole or a part of the money thereby secured, the land registrar may note on the register the discharge of the land from the mortgage or the discharge of the part of the money, and thereupon the encumbrance ceases as to the land or money discharged. R.S.O. 1990, c. L.5, s. 103 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Discharge noted on requisition of mortgagee

(2) On the requisition or certificate of a mortgagee whose mortgage was entered on the register on the first registration of the land, or of the registered assignee of the mortgagee or of the personal representative of the mortgagee or assignee, authorizing or certifying the discharge of the whole or a part of the land from the mortgage or the discharge of the whole or a part of the money secured by the mortgage, the discharge of the whole or a part of the land from the mortgage or the discharge of the part of the money may be noted on the register and in that case, the encumbrance ceases as to the land or money discharged. 2012, c. 8, Sched. 28, s. 60.

See: 2012, c. 8, Sched. 28, ss. 60, 98.

Death of person after signing requisition

(3) The death of the person who signed the requisition or certificate does not revoke or otherwise affect it. R.S.O. 1990, c. L.5, s. 103 (3).

Cancellation of lien

104. Where it appears to the satisfaction of the land registrar that a lien under the *Construction Lien Act* or the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, has ceased to exist, he or she may make an entry in the register cancelling the claim, and thereupon the claim ceases to affect the land. R.S.O. 1990, c. L.5, s. 104; 1993, c. 27, Sched.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 104 is repealed and the following substituted:

Cancellation of lien

104. If it appears to the satisfaction of the Director that a lien under the *Construction Lien Act* or the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, has ceased to exist, an entry may be made in the register cancelling the claim and in that case, the claim ceases to affect the land. 2012, c. 8, Sched. 28, s. 61.

See: 2012, c. 8, Sched. 28, ss. 61, 98.

LEASEHOLD INTERESTS

Transfer of leasehold land

105. (1) A registered owner of leasehold land may, in the prescribed manner, transfer the whole of that registered owner's estate in the land or in a part thereof. R.S.O. 1990, c. L.5, s. 105 (1); 1993, c. 27, Sched.; 1998, c. 18, Sched. E, s. 140.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "in the prescribed manner" and substituting "in the manner specified by the Director". See: 2012, c. 8, Sched. 28, ss. 62 (1), 98.

Transferor deemed owner until registration

(2) The transfer shall be completed by the land registrar entering on the register the transferee as owner of the leasehold land transferred and, until the registration of the transfer has been completed in accordance with this Act, the transferor shall be deemed to remain owner. R.S.O. 1990, c. L.5, s. 105 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "by the land registrar entering on the register the transferee" and substituting "by the entry on the register of the transferee". See: 2012, c. 8, Sched. 28, ss. 62 (2), 98.

Estate of transferee for valuable consideration of leasehold land with a declaration of absolute title of lessor

106. A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, when registered, vests in the transferee the land transferred for all the leasehold estate described in the registered lease relating to such land and then unexpired, with all implied or expressed rights, privileges and appurtenances, free from all estates and interests whatsoever, including any estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario, but subject to the following:

1. All implied and express covenants, obligations and liabilities incident to such estate.
2. The encumbrances, if any, entered or noted on the register.
3. The liabilities, rights and interests that affect the leasehold estate and that are by this Act declared not to be encumbrances in the case of registered freehold land unless the contrary is expressed on the register. R.S.O. 1990, c. L.5, s. 106.

Estate of transferee for valuable consideration of leasehold land without a declaration of title of lessor

107. A transfer for valuable consideration of leasehold land, registered without a declaration of the title of the lessor, does not affect the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held, but otherwise, when registered, has the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1990, c. L.5, s. 107.

Estate of transferee for valuable consideration of leasehold land with a declaration of qualified title of lessor

108. A transfer for valuable consideration of leasehold land, registered with a declaration that the lessor had a qualified title to grant the lease under which the land is held, when registered, has the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, except that such transfer does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted from the effect of registration. R.S.O. 1990, c. L.5, s. 108.

Estate of voluntary transferee of leasehold land

109. A transfer of registered leasehold land made without valuable consideration is subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same, but otherwise, when registered, in all respects and in particular as respects registered dealings on the part of the transferee, has the same effect as a transfer of the same land for valuable consideration. R.S.O. 1990, c. L.5, s. 109.

110. REPEALED: 1998, c. 18, Sched. E, s. 141 (1).

Note: Despite the repeal of section 110, subsection 110 (1), as it read immediately before December 18, 1998, continues to apply to a transfer of registered leasehold land that was executed before September 6, 1984, in the case of land in the County of Oxford as it existed on December 31, 1980, or before January 17, 1985, in the case of land elsewhere in Ontario. See: 1998, c. 18, Sched. E, s. 141 (2).

Lessee may apply for registration of notice of lease

111. (1) A lessee or other person entitled to or interested in a lease or agreement for a lease of registered land may apply to the land registrar to register notice of the lease or agreement in the prescribed manner. R.S.O. 1990, c. L.5, s. 111 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Registration of notice of lease

(1) A lessee or other person entitled to or interested in a lease or agreement for a lease of registered land may apply to the Director to register notice of the lease or agreement in the required manner. 2012, c. 8, Sched. 28, s. 63 (1).

See: 2012, c. 8, Sched. 28, ss. 63 (1), 98.

Lease by registered owner

(2) Where the lease is by the registered owner of the land, the land registrar may without notice to the registered owner enter on the register such notice thereof as the land registrar considers necessary. R.S.O. 1990, c. L.5, s. 111 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Lease by registered owner

(2) Where the lease is by the registered owner of the land, notice of it as specified by the Director may be entered on the register without notice to the registered owner. 2012, c. 8, Sched. 28, s. 63 (1).

See: 2012, c. 8, Sched. 28, ss. 63 (1), 98.

Lease not by registered owner

(3) Where the lease or agreement for a lease is not by the registered owner but the registered owner's title appears to be subject thereto, the land registrar, with the concurrence of the owner, may enter notice of the lease or agreement on the register. R.S.O. 1990, c. L.5, s. 111 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "land registrar" and substituting "Director". **See:** 2012, c. 8, Sched. 28, ss. 63 (2), 98.

Documents to deliver

(4) The applicant shall deliver to the land registrar,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "land registrar" in the portion before clause (a) and substituting "Director". **See:** 2012, c. 8, Sched. 28, ss. 63 (2), 98.

- (a) a notice of the lease or agreement setting out the particulars of it;
- (b) a notice accompanied by the lease or agreement; or
- (c) a notice accompanied by a notarial copy of the lease or agreement. 1998, c. 18, Sched. E, s. 142 (1).

Effect of registration

(5) When notice of a lease or an agreement for lease is registered in respect of land, every registered owner of the land and every person deriving title through the registered owner, except owners of encumbrances registered before the registration of the notice, shall be deemed to have knowledge of the document that the applicant delivered to the land registrar under subsection (4) as an encumbrance on the land. 1998, c. 18, Sched. E, s. 142 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "land registrar" and substituting "Director". **See:** 2012, c. 8, Sched. 28, ss. 63 (2), 98.

Notice of interest in lease

(6) Where notice of a lease or agreement for a lease has been registered, a notice may be registered of,

- (a) a sublease;
- (a.1) an amendment of the lease;
- (b) an assignment of the lease;
- (c) a charge of the lease;
- (d) an assignment of the lessor's interest in the lease; or
- (e) a determination of the lease. R.S.O. 1990, c. L.5, s. 111 (6); 1998, c. 18, Sched. E, s. 142 (2).

Documents to deliver

(6.1) Where a notice of an interest may be registered under subsection (6), any of the following may be registered:

1. A notice setting out the particulars of the interest.
2. A notice accompanied by the original document creating the interest.
3. A notice accompanied by a notarial copy of the document creating the interest. 2002, c. 18, Sched. E, s. 6 (6).

Priorities under leases

(7) Subject to paragraph 4 of subsection 44 (1) and except where the person claiming an interest under a lease or agreement for a lease of which interest a notice has been registered has actual notice of another interest under the lease or agreement for a lease or under another lease or agreement for a lease, the first-mentioned interest under the lease or under the agreement for a lease takes priority over one of which a notice has not been registered. R.S.O. 1990, c. L.5, s. 111 (7).

Determination of lease existing at first registration

112. The land registrar, on proof to his or her satisfaction of the determination of a lease of registered land existing at first registration, shall note on the register the determination of the lease. R.S.O. 1990, c. L.5, s. 112.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 112 is repealed and the following substituted:

Determination of lease existing at first registration

112. Upon proof satisfactory to the Director of the determination of a lease of registered land existing at first registration, the determination of the lease shall be noted on the register. 2012, c. 8, Sched. 28, s. 64.

See: 2012, c. 8, Sched. 28, ss. 64, 98.

113. REPEALED: 1998, c. 18, Sched. E, s. 143.
114. REPEALED: 1998, c. 18, Sched. E, s. 143.
115. REPEALED: 1998, c. 18, Sched. E, s. 143.
116. REPEALED: 1998, c. 18, Sched. E, s. 143.
117. REPEALED: 1998, c. 18, Sched. E, s. 143.

RESTRICTIONS, ETC.

Power to place restrictions on register

118. (1) Where the registered owner of freehold (or leasehold) land or of a charge desires to impose restrictions on transferring or charging the land or charge, the registered owner may apply to the land registrar to make an entry on the register that no transfer shall be made or charge created unless the following things, or such of them as the owner determines, are done:

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar to make an entry" in the portion before paragraph 1 and substituting "Director for an entry to be made". **See:** 2012, c. 8, Sched. 28, ss. 65 (1), 98.

1. Notice of an application for a transfer or for the creation of a charge is transmitted by registered mail to such address as the registered owner specifies to the land registrar.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 is repealed and the following substituted:

1. Notice of an application for a transfer or for the creation of a charge is sent in the manner required by the Director to the persons who the registered owner specifies in the application.

See: 2012, c. 8, Sched. 28, ss. 65 (2), 98.

2. The consent of some person or persons, to be named by the registered owner, is given to the transfer or the creation of a charge.
3. Some other matter or thing is done as is required by the registered owner and approved by the land registrar. R.S.O. 1990, c. L.5, s. 118 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 is amended by striking out "land registrar" and substituting "Director". **See:** 2012, c. 8, Sched. 28, ss. 65 (3), 98.

Land registrar to enter restrictions in register

(2) If the land registrar is satisfied of the right of the applicant to impose such restrictions, he or she shall make a note of them on the register and no transfer shall be made or charge created except in conformity therewith. R.S.O. 1990, c. L.5, s. 118 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Entry on register

(2) If the Director is satisfied of the right of the applicant to impose the restrictions, they shall be noted on the register and no transfer shall be made or charge created except in conformity with them. 2012, c. 8, Sched. 28, s. 65 (4).

See: 2012, c. 8, Sched. 28, ss. 65 (4), 98.

Discretion of the land registrar

(3) The land registrar is not required to enter a note of a restriction, except upon such terms as to payment of the fees and otherwise that are required, or to enter a note of a restriction that he or she considers unreasonable or calculated to cause inconvenience. R.S.O. 1990, c. L.5, s. 118 (3); 1998, c. 18, Sched. E, s. 144.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 65 (5), 98.

Restrictions may be withdrawn or set aside

(4) Any such restriction may at any time be withdrawn or modified at the instance of all the persons for the time being appearing by the register to be interested in the restriction, and is also subject to be set aside by the court. R.S.O. 1990, c. L.5, s. 118 (4).

Conditions, restrictions, covenants, etc.

Registration of conditions and restrictions, on application

119. (1) Upon the application of the owner of land that is being registered or of the registered owner of land, the land registrar may register as annexed to the land a condition or restriction that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other condition or restriction running with or capable of being legally annexed to land. R.S.O. 1990, c. L.5, s. 119 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Conditions, restrictions, etc.

(1) Upon the application of the owner of land that is being registered or of the registered owner of land, the following conditions or restrictions may be registered as annexed to the land:

1. A condition or restriction that the land or a specified part of it is not to be built upon or is to be or is not to be used in a particular manner.
2. Any other condition or restriction running with or capable of being legally annexed to land. 2012, c. 8, Sched. 28, s. 66 (1).

See: 2012, c. 8, Sched. 28, ss. 66 (1), 98.

Registration of conditions, restrictions and covenants, on transfer

(2) The land registrar may register as annexed to the land a condition, restriction or covenant that is included in a transfer of registered land that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other condition, restriction or covenant running with or capable of being legally annexed to land. R.S.O. 1990, c. L.5, s. 119 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Same, on transfer

(2) The following conditions, restrictions or covenants may be registered as annexed to registered land:

1. A condition, restriction or covenant that is included in a transfer of the land that the land or a specified part of it is not to be built upon or is to be or is not to be used in a particular manner.
2. Any other condition, restriction or covenant that is included in a transfer of the land and that runs with or is capable of being legally annexed to land, as the Director specifies. 2012, c. 8, Sched. 28, s. 66 (1).

See: 2012, c. 8, Sched. 28, ss. 66 (1), 98.

Registration of covenants, on application

(3) Upon the application of the owner of land that is being registered or of the registered owner of land, the land registrar may register as annexed to the land a covenant that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other covenant running with or capable of being legally annexed to land. R.S.O. 1990, c. L.5, s. 119 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Registration of covenants, on application

(3) Upon the application of the owner of land that is being registered or of the registered owner of land, the following covenants may be registered as annexed to the land:

1. A covenant that the land or a specified part of it is not to be built upon or is to be or is not to be used in a particular manner.
2. Any other covenant running with or capable of being legally annexed to land, as the Director specifies. 2012, c. 8, Sched. 28, s. 66 (1).

See: 2012, c. 8, Sched. 28, ss. 66 (1), 98.

Idem

- (4) A covenant shall not be registered under subsection (3) unless,
- (a) the covenantor is the owner of the land to be burdened by the covenant;
 - (b) the covenantee is a person other than the covenantor;
 - (c) the covenantee owns land to be benefitted by the covenant and that land is mentioned in the covenant; and
 - (d) the covenantor signs the application to assume the burden of the covenant. R.S.O. 1990, c. L.5, s. 119 (4).

Notice and modification or discharge of covenants

(5) The first owner and every transferee, and every other person deriving title from the first owner, shall be deemed to be affected with notice of such condition or covenant, but any such condition or covenant may be modified or discharged by order of the court on proof to the satisfaction of the court that the modification will be beneficial to the persons principally interested in the enforcement of the condition or covenant. R.S.O. 1990, c. L.5, s. 119 (5).

Covenants or conditions running with land

(6) The entry on the register of a condition or covenant as running with or annexed to land does not make it run with the land, if such covenant or condition on account of its nature, or of the manner in which it is expressed, would not otherwise be annexed to or run with the land. R.S.O. 1990, c. L.5, s. 119 (6).

Subsequent transfers

(7) Where a condition or covenant has been entered on the register as annexed to or running with land and a similar condition is contained in a subsequent transfer or a similar covenant is in express terms entered into with the owner of the land by a subsequent transferee, or vice versa, it is not necessary to repeat the condition or covenant on the register or to refer thereto, but the land registrar may, upon a special application, enter the condition or covenant either in addition to or in lieu of the condition or covenant first mentioned. R.S.O. 1990, c. L.5, s. 119 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is amended by striking out "but the land registrar may, upon a special application, enter the condition or covenant either in addition to or in lieu of the condition or covenant first mentioned" at the end and substituting "but the condition or covenant may, upon application, be entered on the register either in addition to or in lieu of the condition or covenant first mentioned as the Director specifies". See: 2012, c. 8, Sched. 28, ss. 66 (2), 98.

Removal of entry of condition or covenant from register

(8) Where a condition or covenant has been entered on the register as annexed to or running with land for a fixed period and the period has expired, the land registrar may, at any time after ten years from the expiration of the period, remove the entry from the register. R.S.O. 1990, c. L.5, s. 119 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is repealed and the following substituted:

Removal of entry of condition or covenant from register

(8) Where a condition or covenant has been entered on the register as annexed to or running with land for a fixed period and the period has expired, the entry may be removed from the register at any time after 10 years from the expiration of the period. 2012, c. 8, Sched. 28, s. 66 (3).

See: 2012, c. 8, Sched. 28, ss. 66 (3), 98.

Condition, etc., expires after 40 years

(9) Where a condition, restriction or covenant has been registered as annexed to or running with the land and no period or date was fixed for its expiry, the condition, restriction or covenant is deemed to have expired forty years after the condition, restriction or covenant was registered, and may be deleted from the register by the land registrar. R.S.O. 1990, c. L.5, s. 119 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is amended by striking out "by the land registrar" at the end. See: 2012, c. 8, Sched. 28, ss. 66 (4), 98.

Effect of conditions and restrictions

(10) Where a condition or restriction has been registered as annexed to land, the condition or restriction is as binding upon any person who becomes the registered owner of the land or a part thereof as if the condition or restriction had been in the form of a covenant entered into by the person who was the registered owner of the land at the time of the registration of the condition or restriction. R.S.O. 1990, c. L.5, s. 119 (10).

Exceptions

(11) The following provisions do not apply to a covenant or easement established under the *Agricultural Research Institute of Ontario Act*:

1. Clause (4) (c).
2. The rule with respect to modification and discharge of covenants in subsection (5). 1994, c. 27, s. 7.

Same

(12) The following provisions do not apply to a covenant or easement entered into or granted under the *Conservation Land Act* or under clause 10 (1) (c) or section 37 of the *Ontario Heritage Act*:

1. Clause (4) (c).
2. The rule with respect to modification and discharge of covenants in subsection (5).
3. Subsection (9). 2006, c. 23, s. 33; 2009, c. 33, Sched. 11, s. 4.

Notice re dower

119.1 A person entitled to an estate in dower in registered land may apply in the prescribed manner to the land registrar to register notice of such estate, and the land registrar, if satisfied of the title of such person to such estate, shall register notice of the same accordingly in the prescribed form and, when so registered, such estate is an encumbrance appearing on the register and shall be dealt with accordingly. 1993, c. 27, Sched.; 1998, c. 18, Sched. E, s. 145.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 119.1 is repealed and the following substituted:

Notice re dower

119.1 (1) A person entitled to an estate in dower in registered land may apply, in the manner specified by the Director, to register notice of the estate and, upon evidence satisfactory to the Director, the notice shall be registered in the required form. 2012, c. 8, Sched. 28, s. 67.

Effect of registration

(2) When the notice is registered, the estate is an encumbrance appearing on the register and shall be dealt with accordingly. 2012, c. 8, Sched. 28, s. 67.

See: 2012, c. 8, Sched. 28, ss. 67, 98.

DEATH OF REGISTERED OWNER

Transmission on death of owner of freehold land

120. On the death of the sole registered owner or of the survivor of several joint registered owners of freehold land, such person shall be registered as owner in the place of the deceased owner or owners as may, on the application of any person interested in the land, be appointed by the land registrar, regard being had to the rights of the several persons interested in the land and in particular to the selection of any such person as for the time being appears to the land registrar to be entitled according to law to be so appointed, subject to an appeal to the Divisional Court in the prescribed manner by any person aggrieved by an order of the land registrar under this section. R.S.O. 1990, c. L.5, s. 120.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 120 is repealed and the following substituted:

DEATH OF REGISTERED OWNER

Transmission on death of owner of freehold land

120. (1) On the death of the sole registered owner or of the survivor of several joint registered owners of freehold land and on the application of any person interested in the land, the person whom the Director specifies shall be registered as owner in the place of the deceased owner or owners. 2012, c. 8, Sched. 28, s. 67.

Factors to consider

(2) In specifying a person for the purpose of the registration, the Director shall have regard to the rights of the several persons interested in the land and in particular to the selection of any person who, for the time being, appears to the Director to be entitled according to law to be so specified. 2012, c. 8, Sched. 28, s. 67.

Appeal

(3) A person aggrieved by an order of the Director made under this section may appeal it to the Divisional Court in the required manner. 2012, c. 8, Sched. 28, s. 67.

See: 2012, c. 8, Sched. 28, ss. 67, 98.

Transmission on death of owner

121. On the death of the sole registered owner or of the survivor of several joint registered owners of leasehold land or of a charge, the executor, administrator or estate trustee of the deceased is entitled to be registered as owner in the place of the deceased. 1998, c. 18, Sched. E, s. 146.

Entry of representatives of deceased tenant in common

122. Where two or more persons holding as tenants in common have been entered as owners of land or a charge and one of them dies, his or her personal representative, or such other person as is entitled to the share of the deceased, may be entered as owner with the survivor or survivors. R.S.O. 1990, c. L.5, s. 122.

Removal of name of deceased joint tenant

123. Where one of two or more persons who are registered as the owners of land as joint tenants or as the owners of a charge on a joint account with right of survivorship has died and it appears from the parcel register that the interest of the deceased owner has passed by right of survivorship to the surviving owner or owners, the land registrar may, upon receipt of an application containing the evidence specified by the Director of Titles, delete the name of the deceased owner from the parcel register. R.S.O. 1990, c. L.5, s. 123; 2000, c. 26, Sched. B, s. 12 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 123 is amended by striking out "the land registrar may, upon receipt of an application containing the evidence specified by the Director of Titles, delete the name of the deceased owner from the parcel register" at the end and substituting "the name of the deceased owner may be deleted from the register upon receipt of an application containing the evidence specified by the Director". See: 2012, c. 8, Sched. 28, ss. 68, 98.

Evidence of transmission of registered ownership

124. The fact of a person having become entitled to land or a charge in consequence of the death of a registered owner shall be proved in the manner specified by the Director of Titles. R.S.O. 1990, c. L.5, s. 124; 2000, c. 26, Sched. B, s. 12 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 124 is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 69, 98.

Entry of name of person beneficially entitled as owner without reference to debts

125. Where land has been transferred to a person beneficially entitled thereto within three years after the death of the registered owner or has become vested in the person beneficially entitled thereto under the *Estates Administration Act*, the land registrar, upon application and the production of evidence specified by the Director of Titles showing that all debts of the deceased registered owner have been paid and that creditors have been notified, may,

- (a) where the person beneficially entitled is shown on the register as owner of the land and the register shows that the land is subject to the unpaid debts of the deceased registered owner, delete the reference to the unpaid debts from the register; or
- (b) register the person beneficially entitled to the land without reference to the unpaid debts of the deceased registered owner. R.S.O. 1990, c. L.5, s. 125; 2000, c. 26, Sched. B, s. 12 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 125 is repealed and the following substituted:

Entry of owner without reference to debts

125. If land has been transferred to a person beneficially entitled to it within three years after the death of the registered owner or has become vested in the person beneficially entitled to it under the *Estates Administration Act*, the following may be done upon application and the production of evidence specified by the Director showing that all debts of the deceased registered owner have been paid and that creditors have been notified:

1. The reference to the unpaid debts of the deceased registered owner may be deleted from the register if the person beneficially entitled to the land is shown on the register as owner of the land and the register shows that the land is subject to the unpaid debts.

2. The person beneficially entitled to the land may be registered without reference to the unpaid debts of the deceased registered owner. 2012, c. 8, Sched. 28, s. 70.

See: 2012, c. 8, Sched. 28, ss. 70, 98.

126. REPEALED: 2009, c. 34, Sched. T, s. 2 (2).

Registration of devisees, etc.

127. (1) A person claiming to be entitled to freehold or leasehold land, or to an interest in it capable of being registered, or to a charge as devisee, heir, executor, administrator or estate trustee of a person who might have been registered under section 66, or a person claiming through the person claiming to be so entitled may apply to be registered as owner of the land, interest or charge and, if no conflicting registration has been made, may be so registered subject to section 66 and this section. 1998, c. 18, Sched. E, s. 148 (1).

Mode of entry

(2) On registering the applicant, the land registrar shall, so far as practicable, enter on the register short particulars of every instrument or other title under which the right is conferred, as if such instrument had been duly presented for registration, or application for entry of transmission had been made in the proper order of time, and, as a preliminary step to the registration of the applicant, may enter an intermediate transferee, heir, executor, administrator or estate trustee as registered owner where that method is more convenient. R.S.O. 1990, c. L.5, s. 127 (2); 1998, c. 18, Sched. E, s. 148 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Mode of entry

(2) On registering the applicant, the Director shall, so far as practicable, enter on the register short particulars of every instrument or other title under which the right is conferred, as if the instrument had been duly presented for registration or application for entry of transmission had been made in the proper order of time. 2012, c. 8, Sched. 28, s. 71.

Preliminary step to registration

(2.1) As a preliminary step to the registration of the applicant, an intermediate transferee, heir, executor, administrator or estate trustee may be entered as registered owner if that method is more convenient. 2012, c. 8, Sched. 28, s. 71.

See: 2012, c. 8, Sched. 28, ss. 71, 98.

All persons entitled must apply

(3) No application by a person claiming through or under a deceased person shall be allowed unless all the persons entitled to the whole of the estate of the deceased in the land are to be entered as owners. R.S.O. 1990, c. L.5, s. 127 (3).

CAUTION, ETC.

Registration of caution

128. (1) A person claiming to have an interest in registered land or in a registered charge of which the person is not the registered owner may apply to the land registrar for the registration of a caution to the effect that no dealing with the land or charge be had on the part of the registered owner or other person named in the caution without the consent of the cautioner. R.S.O. 1990, c. L.5, s. 128 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 72, 98.

Caution by registered owner

(2) Where the registered owner of freehold or leasehold land or of a charge has executed a transfer or a charge of the land or a transfer of the charge but claims that on account of special circumstances shown by affidavit the transferee or chargee should not be registered without the consent of the registered owner, the land registrar may permit the registration of a caution by the registered owner. R.S.O. 1990, c. L.5, s. 128 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 72, 98.

When no caution

(3) A person interested under a lease or agreement for a lease of which notice has been entered on the register is not entitled to register a caution in respect of the lease or agreement. R.S.O. 1990, c. L.5, s. 128 (3).

Expiry

(4) A caution registered under this section on or after June 16, 1999 ceases to have effect 60 days from the date of its registration and may not be renewed. 1998, c. 18, Sched. E, s. 149.

(5) REPEALED: 1998, c. 18, Sched. E, s. 149 (1).

Note: A caution registered under section 128 or a predecessor of that section before June 16, 1999 ceases to have effect five years from June 16, 1999, if the date that the caution ceases to have effect is not specified in the caution or by subsection 128 (4) of this Act, as it read immediately before June 16, 1999, or if there is a date specified in the caution or by subsection 128 (4) of this Act, as it read immediately before June 16, 1999, the earlier of that date and five years from the date of registration of the caution. See: 1998, c. 18, Sched. E, s. 151 (2).

Cautions

129. (1) After a caution has been registered, the land registrar shall not, without the consent of the cautioner, register any dealing with the land or charge against which the caution is registered. R.S.O. 1990, c. L.5, s. 129 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Cautions

(1) After a caution has been registered, no dealing with the land or charge against which the caution is registered shall be registered without the consent of the cautioner. 2012, c. 8, Sched. 28, s. 73 (1).

See: 2012, c. 8, Sched. 28, ss. 73 (1), 98.

Notice of caution

(2) After registering a caution, the cautioner shall serve a copy of the caution and a notice containing the particulars of its registration on the registered owner of the land and all other persons having an interest in the land or the charge against which the caution was registered. 1998, c. 18, Sched. E, s. 150 (1).

Application

(3) In the case of a caution registered before June 16, 1999, the registered owner of the land or any other person having an interest in the land or the charge against which the caution was registered is entitled, on application to the land registrar, to have the land registrar delete the entry of the caution from the register if the applicant has served a notice of the application on the cautioner at least 60 days before making the application. 1998, c. 18, Sched. E, s. 150 (1, 2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "the land registrar, to have the land registrar delete the entry of the caution" and substituting "the Director, to have the entry of the caution deleted". See: 2012, c. 8, Sched. 28, ss. 73 (2), 98.

(4) REPEALED: 1998, c. 18, Sched. E, s. 150 (1).

When consent of cautioner not required

(5) The consent of a cautioner is not required where the dealing proposed to be registered is under the authority of a judgment or order of the court in a proceeding to which the cautioner is a party or where such dealing is under a power of sale contained in a charge or mortgage that is prior to the title under which the cautioner claims and the cautioner has been served with a notice of the proposed exercise of the power of sale and the caution is not in respect of the exercise of the power of sale or where the dealing is of such a nature that it cannot detrimentally affect the interest of the cautioner as claimed in the affidavit filed with the caution or where the transferee, chargee or other person desiring the registration of the dealing is willing that the same should be registered subject to the continuance of the caution and the land registrar thinks fit so to register it, and, where a caution is continued, such continuance prevents further registrations of dealings by the registered owner until the consent of the cautioner is obtained, unless as in this section provided. R.S.O. 1990, c. L.5, s. 129 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed and the following substituted:

Consent of cautioner not required

(5) Subject to the requirements specified by the Director, the consent of a cautioner is not required if,

- (a) the dealing proposed to be registered is under the authority of a judgment or order of the court in a proceeding to which the cautioner is a party;
- (b) the dealing is under a power of sale contained in a charge or mortgage that is prior to the title under which the cautioner claims, the cautioner has been served with a notice of the proposed exercise of the power of sale and the caution is not in respect of the exercise of the power of sale;
- (c) the dealing is of such a nature that it cannot detrimentally affect the interest of the cautioner as claimed in the affidavit filed with the caution; or
- (d) the transferee, chargee or other person desiring the registration of the dealing is willing that it should be registered subject to the continuance of the caution and the Director thinks fit to register it. 2012, c. 8, Sched. 28, s. 73 (3).

Continuance of caution

(5.1) If a caution is continued, the continuance prevents further registrations of dealings by the registered owner until the consent of the cautioner is obtained, unless this section provides otherwise. 2012, c. 8, Sched. 28, s. 73 (3).

See: 2012, c. 8, Sched. 28, ss. 73 (3), 98.

Dealing where caution against part of land

(6) Where a caution affects part only of the land dealt with by the transfer, charge or other instrument, the land registrar may, upon the application in writing of the person desiring registration or the person's solicitor, register the instrument as to the land not affected by the caution, and may subsequently, with the consent of the cautioner, register the dealing as to the remainder of the land dealt with by the instrument or any part thereof. R.S.O. 1990, c. L.5, s. 129 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 73 (4), 98.

Deletion from register

- (7) A land registrar shall delete the entry of a caution from the register as soon as practicable when,
- (a) the caution ceases to have effect; or
 - (b) the land registrar receives a withdrawal of the caution in the prescribed form. 1998, c. 18, Sched. E, s. 150 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is repealed and the following substituted:

Deletion from register

- (7) The entry of a caution shall be deleted from the register as soon as practicable when,
- (a) the caution ceases to have effect; or
 - (b) a withdrawal of the caution in the required form is received. 2012, c. 8, Sched. 28, s. 73 (5).

See: 2012, c. 8, Sched. 28, ss. 73 (5), 98.

Second caution

130. A second caution by the same cautioner or by any other person in respect of the same matter shall not be registered or have any effect except with the permission of the land registrar, which may be given either upon terms or without terms as the land registrar considers proper. R.S.O. 1990, c. L.5, s. 130.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 130 is repealed and the following substituted:

Second caution

130. A second caution by the same cautioner or by any other person in respect of the same matter shall not be registered or have any effect except with the approval of the Director, which may be given either upon terms or without terms as the Director considers proper. 2012, c. 8, Sched. 28, s. 74.

See: 2012, c. 8, Sched. 28, ss. 74, 98.

Caution to be supported by affidavit

131. Every caution shall be supported by either an affidavit in the prescribed form or a statement in a form specified by the Director, stating the nature of the interest of the cautioner, the land to be affected by the caution and such other matters as are prescribed. R.S.O. 1990, c. L.5, s. 131; 2002, c. 18, Sched. E, s. 6 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 131 is repealed and the following substituted:

Caution to be supported by affidavit

131. Every caution shall be supported by an affidavit in the required form or a statement in a form specified by the Director stating the nature of the interest of the cautioner, the land to be affected by the caution and the other matters specified by the Director. 2012, c. 8, Sched. 28, s. 74.

See: 2012, c. 8, Sched. 28, ss. 74, 98.

Liability where caution improperly registered

132. A person who registers a caution without reasonable cause is liable to make to any person who may sustain damage by its registration such compensation as is just, and the compensation shall be deemed to be a debt due from the person who has registered the caution to the person who has sustained damage. R.S.O. 1990, c. L.5, s. 132.

Limit of effect of caution

133. A caution does not prejudice the claim or title of any person and has no effect except as in this Act provided. R.S.O. 1990, c. L.5, s. 133.

134. REPEALED: 1998, c. 18, Sched. E, s. 151 (1).

Note: A caution registered under section 134 or a predecessor of that section before June 16, 1999 ceases to have effect five years from June 16, 1999, if the date that the caution ceases to have effect is not specified in the caution or by subsection 128 (4) of this Act, as it read immediately before June 16, 1999, or if there is a date specified in the caution or by subsection 128 (4) of this Act, as it read immediately before June 16, 1999, the earlier of that date and five years from the date of registration of the caution. See: 1998, c. 18, Sched. E, s. 151 (2).

Sale of standing timber

135. (1) Where timber standing upon registered land is sold under an agreement in writing, the purchaser, instead of registering a caution, may deposit the agreement with the land registrar, and the land registrar, upon proof of the due execution thereof by the owner, shall register it as an encumbrance on the land by entering a note on the register referring to the instrument and giving shortly its effect. R.S.O. 1990, c. L.5, s. 135 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 75 (1), 98.

Address for service

(2) When registering the agreement, the purchaser shall by memorandum endorsed thereon or annexed thereto give the purchaser's address for service. R.S.O. 1990, c. L.5, s. 135 (2).

Discharge by consent

(3) The registration of such an agreement may be vacated upon the consent in writing of the purchaser verified by an affidavit of execution. R.S.O. 1990, c. L.5, s. 135 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "vacated" and substituting "deleted from the register". See: 2012, c. 8, Sched. 28, ss. 75 (2), 98.

Discharge by land registrar

(4) The registration of such an agreement may also be vacated if the purchaser fails, for the period of one month from the date of the mailing of the notice provided for in subsection (5), to satisfy the land registrar that the purchaser still has rights under the agreement. R.S.O. 1990, c. L.5, s. 135 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed and the following substituted:

Discharge by Director

(4) The registration of such an agreement may also be deleted from the register if the purchaser fails, for the period of one month from the date of the mailing of the notice mentioned in subsection (5), to satisfy the Director that the purchaser still has rights under the agreement. 2012, c. 8, Sched. 28, s. 75 (3).

See: 2012, c. 8, Sched. 28, ss. 75 (3), 98.

Notice

(5) Upon proof to his or her satisfaction that the rights of the purchaser are at an end, the land registrar shall send a notice by registered mail addressed to the purchaser at the purchaser's address for service, warning the purchaser that the agreement will cease to have effect after the expiration of one month from the mailing of the notice unless good cause for its continuance is shown. R.S.O. 1990, c. L.5, s. 135 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 75 (4), 98.

Removal of entry of timber agreement from register ten years after expiry

(6) At any time after ten years from the expiry date of an agreement or renewal thereof of which notice has been registered under this section, the land registrar may, upon application and without notice to the purchaser, delete from the register the entry of the notice of agreement or of the renewal. R.S.O. 1990, c. L.5, s. 135 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 75 (4), 98.

EXECUTIONS

Notice of executions

136. (1) A sheriff to whom a writ of execution, a renewal of a writ of execution or a certificate of lien under the *Bail Act* is directed shall, upon receiving from or on behalf of the judgment creditor the required fee and instructions to do the actions described in clauses (a) and (b), forthwith,

- (a) enter the writ, renewal or certificate of lien, as the case may be, in the electronic database that the sheriff maintains for writs of execution;
- (b) indicate in the electronic database that the writ, renewal or certificate of lien, as the case may be, affects land governed by this Act;
- (c) assign a number in the electronic database consecutively to each writ, renewal and certificate of lien in the order of receiving it;
- (d) note in the electronic database the date of receiving each writ, renewal and certificate of lien; and
- (e) give the land registrar of each land titles division wholly or partially within the sheriff's territorial jurisdiction access to the electronic database. 1998, c. 18, Sched. E, s. 152 (1); 2002, c. 18, Sched. E, s. 6 (10); 2009, c. 33, Sched. 2, s. 41 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (e) is repealed and the following substituted:

- (e) give the Director access to the electronic database for each land titles division wholly or partially within the sheriff's territorial jurisdiction.

See: 2012, c. 8, Sched. 28, ss. 76 (1), 98.

When land is bound

(2) No registered land is bound by any writ of execution, renewal or certificate of lien mentioned in subsection (1) until the sheriff has complied with that subsection. 1998, c. 18, Sched. E, s. 152 (1).

Transfer void

(3) No sale or transfer under a writ of execution or certificate of lien mentioned in subsection (1) is valid as against a person purchasing for valuable consideration before the sheriff has complied with that subsection, although the purchaser may have had notice of the writ or certificate of lien, as the case may be. 1998, c. 18, Sched. E, s. 152 (1).

(4) REPEALED: 1998, c. 18, Sched. E, s. 152 (1).

(5) REPEALED: 1998, c. 18, Sched. E, s. 152 (1).

Different name on writ

(6) A writ of execution or certificate of lien mentioned in subsection (1) has no effect under this Act if it is issued against the registered owner under a different name from that under which the owner is registered. 1998, c. 18, Sched. E, s. 152 (2).

Where writ not binding

(7) A writ of execution, renewal or certificate of lien mentioned in subsection (1) does not bind land being transferred or charged as against the transferee or chargee if the land registrar,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is amended by striking out "land registrar" in the portion before clause (a) and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 76 (2), 98.

- (a) decides that the name of the execution debtor appearing in the writ, renewal or certificate of lien, as the case may be, and the name of the registered owner as it appears in the records of the land registry office of the land registrar do not represent the same person; and

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by striking out "of the land registrar". See: 2012, c. 8, Sched. 28, ss. 76 (3), 98.

(b) does one of the following:

1. Issues a certificate to the effect that the land registrar has made the decision described in clause (a).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 76 (4), 98.

2. In the case of a transfer, registers the transfer free of the writ, renewal or certificate of lien, as the case may be. 1998, c. 18, Sched. E, s. 152 (2).

No additional fee

(8) No additional fee is payable to the sheriff or to the land registrar in respect of a certificate under section 12 of the *Execution Act*. R.S.O. 1990, c. L.5, s. 136 (8).

(9) REPEALED: 1998, c. 18, Sched. E, s. 152 (3).

Procedure when claimed writ not binding

137. Where a person applies for registration of an instrument and claims that a writ apparently affecting land does not affect the land or a charge thereon, the person shall produce such evidence thereof as the land registrar considers necessary, and the land registrar may require all parties interested to be notified of the application and may himself or herself decide the question or may direct an issue to be tried or a case to be stated and may make such order as to costs as the land registrar considers just. R.S.O. 1990, c. L.5, s. 137.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 137 is amended by striking out "land registrar" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 77, 98.

Seizure ineffectual until certificate by sheriff

138. (1) The seizure under execution or other process of a mortgage or charge or of leasehold land registered under this Act does not take effect until a certificate of the sheriff or other officer that he or she has taken the mortgage, charge or leasehold land under such process against the registered owner thereof is lodged with the land registrar. R.S.O. 1990, c. L.5, s. 138 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "lodged with the land registrar" at the end and substituting "delivered to the Director for registration". See: 2012, c. 8, Sched. 28, ss. 78 (1), 98.

Contents of certificate

(2) The certificate shall state the number of the parcel under which the land affected is registered and the name of the owner and shall be entered by the land registrar in the register. R.S.O. 1990, c. L.5, s. 138 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "by the land registrar". See: 2012, c. 8, Sched. 28, ss. 78 (2), 98.

Application of section

(3) This section does not apply where the steps prescribed by section 23 of the *Execution Act* have been taken with respect to a mortgage or charge. R.S.O. 1990, c. L.5, s. 138 (3); 1993, c. 27, Sched.

TRUSTEE ACT, APPLICABILITY

Application of *Trustee Act*

139. All the provisions of the *Trustee Act* that are not inconsistent with the provisions of this Act apply to land and charges registered under this Act, but this enactment does not prejudice the applicability to such land and charges of any provisions of that Act relating to land or choses in action. R.S.O. 1990, c. L.5, s. 139.

PART VIII DESCRIPTIONS OF LAND AND REGISTERED PLANS

How land to be described

140. (1) Registered land shall be described in such manner as the land registrar considers is best calculated to secure accuracy. R.S.O. 1990, c. L.5, s. 140 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 79, 98.

Description not conclusive

(2) The description of registered land is not conclusive as to the boundaries or extent of the land. R.S.O. 1990, c. L.5, s. 140 (2).

Part II of *Land Registration Reform Act*

141. (1) This section applies only to land in the parts of Ontario designated under Part II of the *Land Registration Reform Act*. R.S.O. 1990, c. L.5, s. 141 (1).

Properties and property identifiers

(2) The Director of Titles shall, in the required manner, divide into blocks and properties any land that is designated under Part II of the *Land Registration Reform Act* and assign property identifiers to those properties. R.S.O. 1990, c. L.5, s. 141 (2); 1998, c. 18, Sched. E, s. 153 (1); 2000, c. 26, Sched. B, s. 12 (10).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 80 (1), 98.

Property maps

(3) The Director of Titles shall, in the required manner, prepare property maps showing all properties and prepare all other maps as are required. 1998, c. 18, Sched. E, s. 153 (2); 2000, c. 26, Sched. B, s. 12 (11).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 80 (1), 98.

Idem

(4) The land registrar shall maintain property maps in the required manner and shall assign property identifiers to properties when and in the manner specified by the Director of Titles. R.S.O. 1990, c. L.5, s. 141 (4); 1998, c. 18, Sched. E, s. 153 (3); 2000, c. 26, Sched. B, s. 12 (11).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed and the following substituted:

Property maps and identifiers

(4) Property maps shall be maintained in the manner specified by the Director and property identifiers shall be assigned to properties when and in the manner specified by the Director. 2012, c. 8, Sched. 28, s. 80 (2).

See: 2012, c. 8, Sched. 28, ss. 80 (2), 98.

Parcel register

(5) The land registrar shall, in the required manner, create and maintain an index in automated form known as the parcel register and enter every instrument that affects a property in the parcel register under the property identifier assigned to that property. R.S.O. 1990, c. L.5, s. 141 (5); 1998, c. 18, Sched. E, s. 153 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed and the following substituted:

Parcel register

(5) An index in automated form known as the parcel register shall be created and maintained and every instrument that affects a property in the parcel register under the property identifier assigned to that property shall be entered in the manner required by the Director. 2012, c. 8, Sched. 28, s. 80 (2).

See: 2012, c. 8, Sched. 28, ss. 80 (2), 98.

Other indexes and records

(6) The land registrar shall, in the required manner, maintain all other indexes and records as are required. 1998, c. 18, Sched. E, s. 153 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is repealed and the following substituted:

Other indexes and records

(6) All other indexes and records shall be maintained in the manner specified by the Director. 2012, c. 8, Sched. 28, s. 80 (2).

See: 2012, c. 8, Sched. 28, ss. 80 (2), 98.

Entry of earlier instruments

(7) The Director of Titles may direct the land registrar to enter, in the required manner, all instruments that were registered before the day this section comes into force, and that belong to a category or were registered during a period specified by the Director of Titles, in the parcel register under the property identifiers for the properties affected by the instruments. R.S.O. 1990, c. L.5, s. 141 (7); 1993, c. 27, Sched.; 1998, c. 18, Sched. E, s. 153 (6); 2000, c. 26, Sched. B, s. 12 (10).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is repealed and the following substituted:

Entry of earlier instruments

(7) The Director may direct that all instruments that were registered before the day this section comes into force and that belong to a category or were registered during a period specified by the Director, be registered in the parcel register under the property identifiers for the properties affected by the instruments in the manner specified by the Director. 2012, c. 8, Sched. 28, s. 80 (2).

See: 2012, c. 8, Sched. 28, ss. 80 (2), 98.

Where description required

142. (1) REPEALED: 1998, c. 18, Sched. E, s. 154 (1).

Brief description and property identifier, etc.

- (2) A document shall not be registered unless it contains,
- (a) a reference to the parcel number, if any, of the land it affects;
 - (b) a reference to the lot, part lot or other unit on the plan or concession it affects;
 - (c) where the document deals with part of a property or part of a parcel, a registrable description of the land it affects; and
 - (d) the property identifier, if any, assigned under subsection 141 (2) or (4) to the property it affects. R.S.O. 1990, c. L.5, s. 142 (2).

Exceptions

- (3) Subsection (2) does not apply to an instrument that is,
- (a) a plan; or
 - (b) one of a specified class of instruments. R.S.O. 1990, c. L.5, s. 142 (3); 1998, c. 18, Sched. E, s. 154 (2).

Idem

(4) Clauses (2) (b) and (c) do not apply to an instrument that is a discharge of charge purporting to discharge a charge completely. R.S.O. 1990, c. L.5, s. 142 (4).

Alteration of registered description of land

143. No alteration shall be made in the registered description of land, except under an order of the court or under subsection 57 (13), subsection 145 (6) or section 158 or 161 or by way of explanation, but this section does not extend to registered dealings with registered land in separate parcels, although the land was originally registered as one parcel. R.S.O. 1990, c. L.5, s. 143.

Compulsory registration

144. (1) Except as provided by subsection (2), where land described in a description as defined in the *Condominium Act, 1998* or shown on a plan of subdivision is situate in a land titles division, the description along with the appropriate declaration or the plan of subdivision, as the case may be, shall be registered under this Act with an absolute title. R.S.O. 1990, c. L.5, s. 144 (1); 2004, c. 19, s. 13 (2); 2009, c. 33, Sched. 17, s. 5 (17).

Exception to subs. (1)

- (2) A plan of subdivision may be registered under the *Registry Act* where,
- (a) the plan is presented and accepted for registration within six months after the operation of this Act was extended to the area in which the land is situate;
 - (b) the registration under this Act of the land included in the plan would, in the opinion of the Director of Titles, result in an unreasonable delay in the registration of the plan; or
 - (c) a regulation made under subsection (3) applies to the land shown on the plan. R.S.O. 1990, c. L.5, s. 144 (2).

Exception by regulation

(3) The Minister may make regulations designating such land titles divisions, or parts thereof, as are specified in the regulations as areas within which subsection (1) does not apply and such designation may be limited to a specified period or may expire on a specified date. R.S.O. 1990, c. L.5, s. 144 (3); 1998, c. 18, Sched. E, s. 155.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 144 is repealed and the following substituted:

Compulsory registration

144. (1) If land is described in a description as defined in the *Condominium Act, 1998*, the description, along with the appropriate declaration as defined in that Act, shall be registered under this Act with an absolute title. 2012, c. 8, Sched. 28, s. 81.

Same, plan of subdivision

(2) If land is shown on a plan of subdivision, the plan of subdivision shall be registered under this Act with an absolute title. 2012, c. 8, Sched. 28, s. 81.

See: 2012, c. 8, Sched. 28, ss. 81, 98.

Plans

145. (1) Every plan submitted for registration or for deposit shall be prepared in accordance with the regulations. R.S.O. 1990, c. L.5, s. 145 (1).

Subdivision plans to be registered

(2) Where land is being subdivided for the purpose of being sold or conveyed in lots, the person making the subdivision shall register in the proper land titles office a plan of the land prepared by an Ontario land surveyor. R.S.O. 1990, c. L.5, s. 145 (2).

Signature to be affixed to plan

(3) The person by whom or on whose behalf a plan is registered shall sign the plan. R.S.O. 1990, c. L.5, s. 145 (3).

Additional information

(4) The land registrar, before accepting a plan for registration, may require evidence to be given him or her explaining any seeming discrepancy between the measurements on the plan and the description of the land in the register, or the land registrar may require evidence to be given respecting any other matter of which he or she requires explanation. R.S.O. 1990, c. L.5, s. 145 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed and the following substituted:

Additional information

(4) Before a plan is accepted for registration or deposit, the Director may require evidence explaining any seeming discrepancy between the measurements on the plan and the description of the land in the register or respecting any other matter that requires explanation. 2012, c. 8, Sched. 28, s. 82 (1).

Sec: 2012, c. 8, Sched. 28, ss. 82 (1), 98.

True copy of plan

(5) The Director of Titles may direct that a true copy of a plan or a part of a plan registered or deposited in a land registry office for a land titles division be made under the direction of the examiner of surveys, who shall certify thereon that it is a true copy of the plan or of a part of a plan, as the case may be, and the copy so made and certified has all the force and effect of the plan or of that part of the plan of which it is a copy. R.S.O. 1990, c. L.5, s. 145 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "Director of Titles" and substituting "Director". Sec: 2012, c. 8, Sched. 28, ss. 82 (2), 98.

Correction of plan

(6) An error, defect or omission in a registered or deposited plan may be corrected in accordance with the regulations. R.S.O. 1990, c. L.5, s. 145 (6).

Orders

146. Section 88 of the *Registry Act* applies with necessary modifications to land registered under this Act. R.S.O. 1990, c. L.5, s. 146.

Composite plan

147. (1) Where land has been or is granted by the Crown under the *Public Lands Act* and a plan of subdivision of the land has not been registered, an application on behalf of the Minister of Natural Resources may be made to the land registrar to register a composite plan showing the land, and the boundaries of the lots or blocks shown thereon shall be deemed to be the true boundaries of the lots or blocks. R.S.O. 1990, c. L.5, s. 147 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" and substituting "Director". Sec: 2012, c. 8, Sched. 28, ss. 83, 98.

Idem

(2) Every composite plan shall conform as nearly as may be to a plan of subdivision under section 145 except that it shall be signed by the Surveyor General or his or her deputy on behalf of all persons having an interest in the land shown thereon. R.S.O. 1990, c. L.5, s. 147 (2).

Subsequent severance

(3) A subsequent severance from land shown on a plan registered under subsection (1) may be delineated by an Ontario land surveyor upon a duplicate of the plan so registered. R.S.O. 1990, c. L.5, s. 147 (3).

148. REPEALED: 2002, c. 18, Sched. E, s. 6 (11).

Survey of township subsequent to grant from Crown

149. (1) Where land in an unsurveyed township in a territorial district has been or is granted by the Crown and the land is subsequently surveyed and laid out into lots and concessions in whole or in part, the survey shall be made in accordance with the provisions of the *Surveys Act* as made applicable by the terms of the patent or order in council granting the land, and the plan of survey shall be registered in the proper land registry office. R.S.O. 1990, c. L.5, s. 149 (1).

Requirements as to plan

(2) Such plan shall be prepared as nearly as may be in accordance with section 145. R.S.O. 1990, c. L.5, s. 149 (2).

Reference plan required in certain cases

150. (1) A transfer or charge of freehold or leasehold land shall not be registered unless a plan of the land prepared by an Ontario land surveyor, to be known as a reference plan, has been deposited for record in the land registry office. R.S.O. 1990, c. L.5, s. 150 (1).

Saving

- (2) Subsection (1) does not apply to a transfer or charge,
- (a) of the whole of a registered parcel of land according to the parcel register;
 - (b) of the whole of a lot, block, street, lane, reserve or common according to a registered plan of subdivision or composite plan; or
 - (c) of the whole of a part according to a previously recorded reference plan of survey. R.S.O. 1990, c. L.5, s. 150 (2).

Idem

(3) The land registrar, having regard to the circumstances, may order that subsection (1) does not apply in the case of a transfer or charge mentioned in the order. R.S.O. 1990, c. L.5, s. 150 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 83, 98.

Boundaries

(4) New boundaries that are created by a severance shown on a reference plan and referred to or incorporated by reference in a registered instrument signed by the registered owner of the land shall be deemed to be true and unalterable boundaries and to be defined by the monuments shown thereon, but such monuments do not change or alter the position of any previously established boundary or prejudice prior registered rights or interests. R.S.O. 1990, c. L.5, s. 150 (4).

Plan of street, road, lane, or common

151. (1) Where a plan of subdivision lays out a part of the land as a street, road, lane or common, it shall not be registered except on the application of the owner of the land subdivided with the consent in writing of all persons who are registered as mortgagees or chargees thereof. R.S.O. 1990, c. L.5, s. 151 (1).

Effect of chargee's consent

(2) The consent of a chargee to a plan of subdivision, when registered, discharges from the charge any land dedicated by the owner as a public highway and any land designated as a reserve that is transferred to the corporation of the municipality in which the land is situate. R.S.O. 1990, c. L.5, s. 151 (2).

Claim under *Family Law Act*

(3) Land dedicated by its owner for a street or public highway is not subject to any claim under Part II of the *Family Law Act* by the spouse of the person by whom it was dedicated. R.S.O. 1990, c. L.5, s. 151 (3); 1993, c. 27, Sched.

Entry on register of municipal corporation as owner of streets laid out on plan

152. (1) Where a street, road or lane laid out on a plan registered in a land registry office has become a public highway and has thereby become vested in a municipal corporation, the municipal corporation may apply to the land registrar to be entered as the owner thereof. R.S.O. 1990, c. L.5, s. 152 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 84 (1), 98.

Entry as owner of transferee from a municipal corporation of closed-up highway

(2) Where a highway or part of it has been closed by the action of a municipal council and the highway or part of it has been transferred by the municipal corporation without the municipal corporation having been entered as owner of it, the

transferee may apply to be entered as owner of the highway or part of it transferred to the transferee and, upon due proof of the facts, the land registrar may enter such transferee as owner. R.S.O. 1990, c. L.5, s. 152 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "the facts, the land registrar may enter such transferee as owner" at the end and substituting "the facts satisfactory to the Director, the transferee may be entered as owner". See: 2012, c. 8, Sched. 28, ss. 84 (2), 98.

Application of *Planning Act*

153. (1) No plan of survey or subdivision to which the *Planning Act* applies shall be registered unless approved under that Act. R.S.O. 1990, c. L.5, s. 153 (1).

Idem

(2) Composite plans registered under section 147 are not subject to the provisions of the *Planning Act* with respect to approval thereof. R.S.O. 1990, c. L.5, s. 153 (2).

Amendment of plan

154. A registered plan shall not be amended except under subsection 145 (6) or under section 146. R.S.O. 1990, c. L.5, s. 154.

PART IX FRAUD

Fraudulent dispositions

155. Subject to this Act, a fraudulent instrument that, if unregistered, would be fraudulent and void is, despite registration, fraudulent and void in like manner. 2006, c. 34, s. 15 (11).

Offences

156. (1) A person is guilty of an offence if the person fraudulently procures or attempts to fraudulently procure a fraudulent entry on the register, an erasure or deletion from the register or an alteration of the register. 2006, c. 34, s. 15 (11).

Penalty

(2) A person who is convicted of an offence under this section is liable to,

(a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day, or both, if the person is an individual; and

(b) a fine of not more than \$250,000, if the person is a corporation. 2006, c. 34, s. 15 (11).

Order for compensation or restitution

(3) If a person is convicted of an offence under this section, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or to make restitution. 2006, c. 34, s. 15 (11).

Limitation

(4) No proceeding under this section shall be commenced more than six years after the facts upon which the proceeding is based first came to the knowledge of the Director of Titles. 2006, c. 34, s. 15 (11).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 85, 98.

Evidence

(5) A statement as to the time when the facts on which the proceeding is based first came to the knowledge of the Director of Titles, that purports to be certified by the Director, is, without proof of the Director's office or signature, admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it. 2006, c. 34, s. 15 (11).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 85, 98.

Cancellation of fraudulent entries

157. (1) Upon the conviction under this Act or under the criminal law of Canada of a person for an offence whereby the person fraudulently procured an entry on the register by reason of which any person other than the rightful owner has become the registered owner of land, or by reason of which land under this Act has been wrongfully encumbered, the land registrar, on the application of the rightful owner, may cancel the wrongful entry and may enter the rightful owner as the registered owner of the land. R.S.O. 1990, c. L.5, s. 157 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 86, 98.

(2) REPEALED: 2009, c. 33, Sched. 17, s. 5 (18).

Application of section

(3) This section applies to past as well as future cases. R.S.O. 1990, c. L.5, s. 157 (3).

PART X RECTIFICATION OF THE REGISTER

Errors

Entry of caution by land registrar in case of error

158. (1) The land registrar may of his or her own accord and without affidavit enter a caution to prevent the dealing with registered land if it appears to the land registrar that an error has been made in an entry by misdescription of the land or otherwise. R.S.O. 1990, c. L.5, s. 158 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Errors, entry of caution

(1) A caution may be entered to prevent the dealing with registered land if it appears to the Director that an error has been made in an entry by misdescription of the land or otherwise. 2012, c. 8, Sched. 28, s. 87 (1).

See: 2012, c. 8, Sched. 28, ss. 87 (1), 98.

Caution in case of fraud

(1.1) If it appears to the land registrar that a registration may be fraudulent, the land registrar may of his or her own accord and without affidavit enter a caution to prevent dealing with the registered land. 2002, c. 18, Sched. E, s. 6 (12).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1.1) is amended by striking out "land registrar" wherever that expression appears and substituting in each case "Director". See: 2012, c. 8, Sched. 28, ss. 87 (2), 98.

Hearing

(1.2) If the land registrar has entered a caution under subsection (1) or (1.1), the Director of Titles may hold a hearing before making any correction under subsection (2), and section 10 applies to the hearing. 2009, c. 33, Sched. 17, s. 5 (19).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1.2) is repealed and the following substituted:

Hearing

(1.2) If a caution has been registered under subsection (1) or (1.1), the Director may hold a hearing before making any correction under subsection (2) and sections 10 and 20 apply to the hearing. 2012, c. 8, Sched. 28, s. 87 (3).

See: 2012, c. 8, Sched. 28, ss. 87 (3), 98.

Correction of errors

(2) Subject to the regulations, before receiving any conflicting instruments or after notifying all persons interested, the land registrar may correct errors and supply omissions in the register, or in an entry in it, upon the evidence that appears sufficient to the land registrar. 1998, c. 18, Sched. E, s. 156.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Correction of errors

(2) Before receiving any conflicting instruments or after notifying all persons specified by the Director, errors and omissions may be corrected in the register, or in an entry in it, upon evidence that appears sufficient to the Director. 2012, c. 8, Sched. 28, s. 87 (3).

See: 2012, c. 8, Sched. 28, ss. 87 (3), 98.

Restoration of covenants or conditions and compensation therefor

(3) Where the land registrar restores to the register any covenant or condition, the land registrar may do so with such modifications as he or she considers advisable so as to do the least possible injury to any person affected by its omission or restoration, and, upon notice to the Minister, at the same time or subsequently, may determine what damages, if any, shall be paid to any person claiming to have been injuriously affected by the omission or restoration of the covenant or condition. R.S.O. 1990, c. L.5, s. 158 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Restoration of covenants or conditions and compensation

(3) If a covenant or condition is restored to the register, it shall be done with the modifications that the Director considers advisable so as to do the least possible injury to any person affected by its omission or restoration; the Director may determine what damages, if any, shall be paid to any person claiming to have been injuriously affected by the omission or restoration of the covenant or condition. 2012, c. 8, Sched. 28, s. 87 (3).

See: 2012, c. 8, Sched. 28, ss. 87 (3), 98.

Court may order rectification

159. Subject to any estates or rights acquired by registration under this Act, where a court of competent jurisdiction has decided that a person is entitled to an estate, right or interest in or to registered land or a charge and as a consequence of the decision the court is of opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as is considered just. R.S.O. 1990, c. L.5, s. 159.

Application to court to rectify

160. Subject to any estates or rights acquired by registration under this Act, if a person is aggrieved by an entry made, or by the omission of an entry from the register, or if default is made or unnecessary delay takes place in making an entry in the register, the person aggrieved by the entry, omission, default or delay may apply to the court for an order that the register be rectified, and the court may either refuse the application with or without costs to be paid by the applicant or may, if satisfied of the justice of the case, make an order for the rectification of the register. R.S.O. 1990, c. L.5, s. 160.

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of section 160 is amended. See: 2012, c. 8, Sched. 28, ss. 88, 98.

Correction of errors in patents after registration

161. Where land has been registered under this Act and the Minister of Natural Resources under the *Public Lands Act* directs an incorrect patent to be cancelled and a correct patent to be issued in its stead, the land registrar, upon receipt of the correct patent, if no conflicting instrument has been received, shall amend the entry on the register to accord with the correct patent or, where a conflicting instrument has been received, the land registrar, after notifying all persons interested, may make such amendment. R.S.O. 1990, c. L.5, s. 161.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 161 is repealed and the following substituted:

Correction of errors in patents after registration

161. If land has been registered under this Act and the Minister of Natural Resources under the *Public Lands Act* directs an incorrect patent to be cancelled and a correct patent to be issued in its stead, the entry on the register shall be amended to accord with the correct patent,

- (a) upon receipt of the correct patent, if no conflicting instrument has been received; or
- (b) after notifying all persons interested in the manner specified by the Director, if a conflicting instrument has been received. 2012, c. 8, Sched. 28, s. 89.

See: 2012, c. 8, Sched. 28, ss. 89, 98.

Deletion from register of reservations, etc., in letters patent

162. (1) Upon receiving a certificate of the Minister of Natural Resources or the Deputy Minister of Natural Resources,

- (a) that a reservation of any class or kind of tree in letters patent to registered land is void;
- (b) that a reservation of mines or minerals in letters patent to registered land issued before the 6th day of May, 1913, is void; or
- (c) that a condition, proviso or reservation in letters patent to registered land, other than a reservation of any class or kind of tree or of mines or minerals is void,

the land registrar shall delete the reservation, condition or proviso from the register without application therefor. R.S.O. 1990, c. L.5, s. 162 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Deletion from register of certain reservations in letters patent

(1) If a certificate of the Minister of Natural Resources or the Deputy Minister of Natural Resources is received indicating that any of the following things are void, the applicable thing shall be deleted from the register without application:

1. A reservation of any class or kind of tree in letters patent to registered land.

2. A reservation of mines or minerals in letters patent to registered land issued before May 6, 1913.
3. A condition, proviso or reservation in letters patent to registered land, other than a reservation of any class or kind of tree or of mines or minerals. 2012, c. 8, Sched. 28, s. 90 (1).

See: 2012, c. 8, Sched. 28, ss. 90 (1), 98.

Transfer, charge, etc., of mines and minerals reserved

(2) Where an owner or former owner has attempted to transfer, charge or otherwise convey any mines or minerals reserved in letters patent to registered land issued before the 6th day of May, 1913, upon receiving a certificate of the Minister of Natural Resources or Deputy Minister of Natural Resources that the reservation in the letters patent is void by statute, the land registrar shall make all proper entries to define the interests of those appearing to be entitled to the mines or minerals. R.S.O. 1990, c. L.5, s. 162 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "the land registrar shall make all proper entries to define the interests of those appearing to be entitled to the mines or minerals" at the end and substituting "all proper entries shall be made to define the interests of those appearing to be entitled to the mines or minerals". See: 2012, c. 8, Sched. 28, ss. 90 (2), 98.

Claims against Assurance Fund

(3) No claim shall be sustained against the Assurance Fund respecting any right arising from any conveyance of mines or minerals reserved in letters patent issued before the 6th day of May, 1913. R.S.O. 1990, c. L.5, s. 162 (3).

PART XI REGULATIONS AND PROCEDURE

Regulations

163. (0.1) The Lieutenant Governor in Council may make regulations governing the publication of information, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*, regarding fraud or suspected fraud in the land titles system. 2006, c. 34, s. 15 (12).

Disclosure permitted

(0.2) Any information published under the authority of a regulation made under subsection (0.1) is deemed to have been disclosed in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*. 2006, c. 34, s. 15 (12).

Minister's regulations

- (1) The Minister may make regulations,
 1. prescribing any matter, other than forms, that this Act directs or authorizes to be prescribed;
 2. governing the precautions to be taken, the instruments to be used, the notices to be given, and the evidence to be adduced in all proceedings under this Act or in connection with registrations under this Act, other than registrations under section 32 or 99 and proceedings under section 46;
 3. requiring the information in connection with any form, evidence or procedure under this Act to be verified by affidavit, declaration or statement;
 4. governing standards and procedure for surveys and plans of registered land;
 5. governing the assessment of costs and the persons by whom the costs are to be paid;
 6. specifying the costs that solicitors may charge the Minister in registering land or for any matter incidental to or consequential on the registration of land or for any other matter required to be done for the purpose of carrying out this Act;
 7. requiring that the costs mentioned in paragraph 6 be payable by commission, percentage or otherwise, and bear a certain proportion to the value of the land registered or be determined on such other principle as is expedient;
 8. respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act, other than matters mentioned in subsection (2) and section 18 or 163.1. 1998, c. 18, Sched. E, s. 157 (1).

Director's regulations

(2) The Director of Titles may make regulations prescribing forms and providing for their use. 1998, c. 18, Sched. E, s. 157 (1); 2000, c. 26, Sched. B, s. 12 (12).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed. See: 2012, c. 8, Sched. 28, ss. 91, 98.

Note: Regulations made under clause 163 (1) (a), (c), (e), (f), (g) or (i) or clause 163 (2) (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) or (p), as those clauses read immediately before December 18, 1998, continue until the Minister makes an order under section 163.1, as enacted by the Statutes of Ontario, 1998, chapter 18, Schedule E, subsection 157 (1), that is inconsistent with those regulations. See: 1998, c. 18, Sched. E, s. 157 (2).

Note: The Lieutenant Governor in Council may by regulation revoke regulations made under clause 163 (1) (a), (c), (e), (f), (g) or (i) or clause 163 (2) (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) or (p), as those clauses read immediately before December 18, 1998, if the Minister makes an order under section 163.1, as enacted by the Statutes of Ontario, 1998, chapter 18, Schedule E, subsection 157 (1), that is inconsistent with those regulations. See: 1998, c. 18, Sched. E, s. 157 (3).

Note: The Lieutenant Governor in Council may by regulation revoke regulations made under clause 163 (1) (b), (d), (h), (j), (k) or (l), as those clauses read immediately before December 18, 1998, if the Minister makes a regulation under subsection 163 (1), as re-enacted by the Statutes of Ontario, 1998, chapter 18, Schedule E, subsection 157 (1), that is inconsistent with those regulations, the Director of Land Registration makes a regulation under subsection 163 (2), as re-enacted by the Statutes of Ontario, 1998, chapter 18, Schedule E, subsection 157 (1), that is inconsistent with those regulations or the Director makes a regulation under subsection 163 (2), as amended by subsection 12 (12) of Schedule B to the *Red Tape Reduction Act, 2000*, that is inconsistent with those regulations. See: 1998, c. 18, Sched. E, s. 157 (4); 2000, c. 26, Sched. B, s. 12 (15).

Orders

163.1 (1) The Minister may make orders,

1. specifying the functions of land registrars relating to the first registration of land under this Act, and specifying which of the functions shall be performed by the Director of Titles or the Director of Land Registration;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 is repealed and the following substituted:

1. specifying the functions of the Director relating to the first registration of land under this Act;

See: 2012, c. 8, Sched. 28, ss. 92 (1), 98.

2. specifying the duties that are to be performed by the Director of Titles, the land registrar and other officers, and the duties of the Director of Titles and of the land registrars that may be performed by other officers;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 is repealed and the following substituted:

2. specifying the duties that are to be performed by the Director and other officers;

See: 2012, c. 8, Sched. 28, ss. 92 (1), 98.

3. specifying the manner in which land is to be divided into blocks and properties;
4. specifying the manner in which property maps and other maps are to be prepared and maintained, and specifying those other maps;
5. specifying the manner in which property identifiers are to be assigned;
6. specifying the manner in which the abstract index is to be created and maintained;
7. specifying other indexes and records and the manner in which they are to be maintained for the purpose of subsection 141 (6);
8. specifying the manner in which instruments are to be entered for the purpose of subsection 141 (7);
9. specifying classes of instruments for the purpose of clause 142 (3) (b);
10. specifying the form and manner in which entries in the records of land registry offices are to be made;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 10 is amended by striking out "form and". **See:** 2012, c. 8, Sched. 28, ss. 92 (2), 98.

11. specifying the manner in which instruments and entries in the register are to be certified at registration;
12. governing the mode in which the register is to be made and kept;
13. governing the mode in which any special register is to be made and kept;
14. specifying methods and standards for computer entry, storage and retrieval of information;
15. governing the custody, disposition and destruction of instruments and records of land registry offices;
16. specifying the manner in which instruments, books, public records and facsimiles of them are to be produced for inspection;
17. specifying the manner in which copies of instruments, books and public records are to be produced and certified;

18. requiring that printed copies of the parcel register relating to land in the parts of Ontario designated under Part II of the *Land Registration Reform Act* be produced at specified times and specifying the times at which they are to be produced;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 18 is repealed and the following substituted:

18. requiring that printed copies of the parcel registers relating to land in the parts of Ontario designated under Part II of the *Land Registration Reform Act* be produced at specified times and on specified days and specifying the times and days at which they are to be produced;

See: 2012, c. 8, Sched. 28, ss. 92 (3), 98.

19. specifying the amounts of the fees payable under this Act or a method for determining them and may consider,
- (i) in the case of the registration of land or of a transfer of land on the occasion of a sale, the value of the land as determined by the amount of purchase money or the value of it to be ascertained in the manner specified in the order,
 - (ii) in the case of registration of a charge or of a transfer of a charge, the amount of the charge;
20. specifying the manner in which fees under this Act are to be paid, authorizing land registrars to require the prepayment of classes of fees by cash deposits and specifying classes of fees for that purpose;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 20 is amended by striking out "land registrars" and substituting "the Director". See: 2012, c. 8, Sched. 28, ss. 92 (4), 98.

21. specifying classes of users who may pay fees under this Act by means of credit accounts rather than on the basis of prepayment or payment at the time the service is rendered;
22. requiring land registrars to assign to persons who ask to search the records of the land registry office account numbers and other identification to enable them to do so;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 22 is amended by striking out "land registrars" and substituting "the Director". See: 2012, c. 8, Sched. 28, ss. 92 (5), 98.

23. governing the amalgamation of the Funds mentioned in section 54;
24. specifying the terms or conditions on which documents, instruments, books or public records are made available under this Act. 1998, c. 18, Sched. E, s. 157 (1); 2002, c. 18, Sched. E, s. 6 (13); 2010, c. 1, Sched. 6, s. 10.

Director's orders

- (1.1) The Director of Titles may make orders,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1.1) is amended by striking out "of Titles" in the portion before clause (a) and by adding the following clause:

- (0.a) specifying the information to be included in forms and documents used in connection with the land titles system;

See: 2012, c. 8, Sched. 28, ss. 92 (6), 98.

- (a) specifying evidence for the purposes of clause 57 (13) (b); or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by striking out "or" at the end. See: 2012, c. 8, Sched. 28, ss. 92 (7), 98.

- (b) specifying what constitutes the requisite due diligence for the purposes of clause 57 (4) (b) or (4.1) (b). 2006, c. 34, s. 15 (13).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1.1) is amended by adding "or" at the end of clause (b) and by adding the following clause:

- (c) specifying anything that is described as specified, approved or required by the Director or described as done to the satisfaction of the Director.

See: 2012, c. 8, Sched. 28, ss. 92 (7), 98.

Not regulations

- (2) An order made by the Minister under subsection (1) or by the Director of Titles under subsection (1.1) is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1998, c. 18, Sched. E, s. 157 (1); 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 34, s. 15 (14).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 92 (8), 98.

Scope of regulations and orders

163.2 The application of any provision of a regulation made under section 163 or an order made under section 163.1 may be limited to one or more land titles divisions or one or more part or parts of a land titles division or divisions. 1998, c. 18, Sched. E, s. 157 (1).

Integration of lands titles and registry records and procedures

164. The provisions of this Act respecting the procedures and records in land registry offices for land titles divisions are subject to any regulation made under paragraph 7 of subsection 102 (1) of the *Registry Act* or section 103 of that Act. R.S.O. 1990, c. L.5, s. 164; 1998, c. 18, Sched. E, s. 158.

Custody of registered documents, etc.

165. (1) Every registered instrument and deposited or registered plan is the property of the Crown and, except as otherwise provided in the regulations, shall be retained in the custody of the land registrar in his or her office. R.S.O. 1990, c. L.5, s. 165 (1).

(2) REPEALED: 1998, c. 18, Sched. E, s. 159 (1).

(3) REPEALED: 1998, c. 18, Sched. E, s. 159 (1).

Production of instruments and copies

(4) Upon receiving the required fee, if any, the land registrar shall, in the required manner,

(a) produce for inspection during office hours,

(i) any instrument relating to the land that is registered in the office, or a facsimile of the instrument, or

(ii) any book or public record of the office relating to the land, or a facsimile of the book or public record;

(b) supply a copy of the whole or a part of,

(i) any instrument relating to the land that is registered in the office, or a facsimile of the instrument, or

(ii) any book or public record of the office relating to the land, or a facsimile of the book or public record; and

(c) certify any copy supplied under clause (b). R.S.O. 1990, c. L.5, s. 165 (4); 1994, c. 27, s. 86 (1); 1998, c. 18, Sched. E, s. 159 (2, 3); 1999, c. 12, Sched. F, s. 28.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 165 is repealed and the following substituted:

Ownership of registered documents

165. (1) Every registered instrument and deposited or registered plan is the property of the Crown and shall be retained in the manner specified by the Director. 2012, c. 8, Sched. 28, s. 93.

Production of documents

(2) Instruments, documents, books, records or a facsimile of them shall be produced for inspection and copying and certified copies of them shall be provided upon payment of the required fee and in the manner specified by the Director. 2012, c. 8, Sched. 28, s. 93.

Hours and days

(3) The Director may specify minimum hours and days for the purposes of subsection (2). 2012, c. 8, Sched. 28, s. 93.

Sec: 2012, c. 8, Sched. 28, ss. 93, 98.

Computer printout, etc., admissible in evidence

166. (1) Where a registered instrument or a written record of a land registry office is recorded electronically or on a magnetic medium, any writing that,

(a) represents the registered instrument or written record;

(b) is generated by or produced from the electronic record or magnetic medium; and

(c) is in a readily understandable form,

is admissible in evidence to the same extent as the original registered instrument or written record. R.S.O. 1990, c. L.5, s. 166 (1).

Idem

(2) Where a record of a land registry office is recorded electronically or on a magnetic medium and there is no original written record that corresponds to the record, any writing that,

- (a) represents the record;
- (b) is generated by or produced from the electronic record or magnetic medium; and
- (c) is in a readily understandable form,

is admissible in evidence to the same extent as the record would be if it were an original written record. R.S.O. 1990, c. L.5, s. 166 (2).

Penalty for altering or removing records

167. (1) Any person, except the land registrar or other officer when entitled by law so to do, who alters any book, record, plan or registered instrument, or by any means or in any way adds to or takes from the contents of any book, record, plan or instrument, and any person who, without lawful authority, removes or attempts to remove any book, record, plan or instrument from the place where it is kept is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for each book, record, plan or instrument that the person alters, removes or attempts to remove. R.S.O. 1990, c. L.5, s. 167 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "Any person, except the land registrar or other officer when entitled by law so to do or" at the beginning and substituting "A person, other than a person authorized pursuant to this Act or otherwise entitled by law so to do". See: 2012, c. 8, Sched. 28, ss. 94 (1), 98.

When limitation period starts to run

(2) For the purpose of determining the last day to prosecute, the limitation period in respect of an offence under subsection (1) shall start at the time that offence is first discovered by the land registrar. R.S.O. 1990, c. L.5, s. 167 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "land registrar" at the end and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 94 (2), 98.

Application

(3) This section does not apply to alterations to a record made by direct electronic transmission under Part III of the *Land Registration Reform Act*. 1994, c. 27, s. 86 (2).

168. REPEALED: 1998, c. 18, Sched. E, s. 160.

Procedures not void for want of form

169. No application, order, affidavit, certificate, registration or other procedure is invalid by reason of any mistake not affecting the substantial justice of the matter. R.S.O. 1990, c. L.5, s. 169.

Payment of costs

170. (1) Unless the Director of Titles makes an order under subsection (2), an applicant under this Act is liable to pay all costs, charges and expenses incurred by or in consequence of the applicant's application, except if parties whose rights are sufficiently secured without their appearance object or if any costs, charges or expenses are incurred unnecessarily or improperly. 2009, c. 33, Sched. 17, s. 5 (20).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 95 (1), 98.

Scale of costs

(2) The Director of Titles may order costs, either as between party and party or as between solicitor and client, to be paid by or to any person who is a party to a proceeding under this Act, and may give directions as to the fund out of which the costs shall be paid, regard being had to subsection (1). R.S.O. 1990, c. L.5, s. 170 (2); 2009, c. 33, Sched. 17, s. 5 (21).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 95 (1), 98.

Appeal from Director of Titles' order

(3) Any person aggrieved by an order of the Director of Titles made under this section may appeal to the Divisional Court, which may annul or, with or without modification, confirm the order. R.S.O. 1990, c. L.5, s. 170 (3); 2009, c. 33, Sched. 17, s. 5 (21).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 95 (1), 98.

Enforcement of order

(4) If a person disobeys an order of the Director of Titles made under this section, the Director of Titles may certify the disobedience to the court and, subject to the right of appeal, the certified order may be enforced as if it were an order of the court. 2009, c. 33, Sched. 17, s. 5 (22).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "of Titles" wherever that expression appears. See: 2012, c. 8, Sched. 28, ss. 95 (1), 98.

Costs of application by trustee, etc.

(5) The amount of all costs, charges and expenses properly incurred by a trustee, mortgagee or other person having a power of selling land of and incidental to an application to be registered shall be ascertained and declared by the land registrar, and shall be deemed to be costs, charges and expenses properly incurred by that person in the execution of the trust or in pursuance of the power, and the person may retain or reimburse the same to the person out of any money coming to the person under the trust or power, and the person is not liable to an account in respect thereof. R.S.O. 1990, c. L.5, s. 170 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "land registrar" and substituting "Director". See: 2012, c. 8, Sched. 28, ss. 95 (2), 98.

Application to withdraw registered land

171. (1) Where after land has been registered special circumstances appear or subsequently arise that make it inexpedient that the land should continue under this Act, the owner may apply in the prescribed manner to the land registrar for the withdrawal of the land from the Act. R.S.O. 1990, c. L.5, s. 171 (1).

Certificate by land registrar

(2) If the owner proves before the land registrar that all persons interested in the land proposed to be withdrawn consent to its withdrawal and satisfies the land registrar that special circumstances exist that render the withdrawal of the land or a part thereof expedient, the land registrar may issue a certificate describing the land or such part thereof as the consent covers and as the land registrar considers proper in such a manner that the certificate can be properly registered in the registry office for the registry division in which the land is situate, and upon the certificate being issued this Act ceases to apply to the land described therein, and the land thereafter is subject to the ordinary laws relating to real estate and to the *Registry Act*. R.S.O. 1990, c. L.5, s. 171 (2).

Certificate to be countersigned by Director

(3) The certificate of the land registrar under this section is not valid unless approved and countersigned by the Director of Titles. R.S.O. 1990, c. L.5, s. 171 (3).

Application of section

(4) This section does not apply to land registered under section 33. R.S.O. 1990, c. L.5, s. 171 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 171 is repealed. See: 2012, c. 8, Sched. 28, ss. 96, 98.

Withdrawal of land by Director

172. (1) The Director of Titles may withdraw land from this Act if, in the Director's opinion, special circumstances appear or subsequently arise that make it inexpedient that the land should continue under this Act. 2000, c. 26, Sched. B, s. 12 (13).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 97, 98.

Notice

(2) The Director of Titles shall notify all persons having a registered interest in the land of the withdrawal. 2000, c. 26, Sched. B, s. 12 (13).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "of Titles". See: 2012, c. 8, Sched. 28, ss. 97, 98.

Français

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TAB 2

Condominium Act, 1998

S.O. 1998, CHAPTER 19

Consolidation Period: From June 20, 2012 to the e-Laws currency date.

Last amendment: 2012, c. 8, Sched. 9.

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**PART I
DEFINITIONS AND INTERPRETATION**

Definitions and interpretation

1. (1) In this Act,

“annual general meeting” means a meeting of the owners of a corporation held in accordance with subsection 45 (2); (“assemblée générale annuelle”)

“approval authority” means the approval authority for the purposes of sections 51, 51.1 and 51.2 of the *Planning Act*; (“autorité approbatrice”)

“auditor” means a person licensed as a public accountant under the *Public Accounting Act, 2004* who is appointed as an auditor of a corporation under section 60; (“vérificateur”)

“board” means the board of directors of a corporation; (“conseil”)

“building” means a building included in a property; (“bâtiment”)

“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 the owner’s unit or common interest; (“réclamation”)

“common elements” means all the property except the units; (“parties communes”)

“common elements condominium corporation” means a common elements condominium corporation described in subsection 138 (2); (“association condominiale de parties communes”)

“common expenses” means the expenses related to the performance of the objects and duties of a corporation and all expenses specified as common expenses in this Act or in a declaration; (“dépenses communes”)

“common interest” means the interest in the common elements appurtenant to,

(a) a unit, in the case of all corporations except a common elements condominium corporation, or

(b) an owner’s parcel of land to which the common interest is attached and which is described in the declaration, in the case of a common elements condominium corporation; (“intérêt commun”)

“common surplus” means the excess of all receipts of the corporation over the expenses of the corporation; (“excédent commun”)

“corporation” means a corporation created or continued under this Act; (“association”)

“declarant” means a person who owns the freehold or leasehold estate in the land described in the description and who registers a declaration and description under this Act, and includes a successor or assignee of that person but does not include a purchaser in good faith of a unit who pays fair market value or a successor or assignee of the purchaser; (“déclarant”)

“declaration” means a declaration registered under section 2 and all amendments to the declaration; (“déclaration”)

“deed” includes a transfer under the *Land Titles Act*; (“acte scellé”)

“description” means a description registered under section 2 and all amendments to the description; (“description”)

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following definition:

“Director of Titles” means the Director of Titles appointed under section 9 of the *Land Titles Act*; (“directeur des droits immobiliers”)

See: 2012, c. 8, Sched. 9, ss. 1 (1), 6.

“encumbrance” means a claim that secures the payment of money or the performance of any other obligation and includes a charge under the *Land Titles Act*, a mortgage and a lien; (“sûreté réelle”)

“freehold condominium corporation” means a corporation in which all the units and their appurtenant common interests are held in fee simple by the owners; (“association condominiale de propriété franche”)

"leasehold condominium corporation" means a corporation in which all the units and their appurtenant common interests are subject to leasehold interests held by the owners; ("association condominiale de propriété à bail")

"lessor", in relation to a leasehold condominium corporation, means the person who owns the freehold estate in the land described in the description; ("bailleur")

"Minister" means the minister responsible for the administration of this Act; ("ministre")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "Minister" is repealed and the following substituted:

"Minister" means the Minister responsible for the administration of subsection 177 (2) of this Act; ("ministre")

See: 2012, c. 8, Sched. 9, ss. 1 (2), 6.

"mortgage" includes a charge under the *Land Titles Act*, in which case "mortgagor" and "mortgagee" mean the chargor and the chargee under the charge; ("hypothèque", "débiteur hypothécaire", "créancier hypothécaire")

"owner" means,

- (a) in relation to a corporation other than a leasehold condominium corporation or a common elements condominium corporation, a person who owns a freehold interest in a unit and its appurtenant common interest and who is shown as the owner in the records of the land registry office in which the description of the corporation is registered, and includes a mortgagee in possession and a declarant with respect to any unit that the declarant has not transferred to another person,
- (b) in relation to a leasehold condominium corporation, a person who owns a leasehold interest in a unit and its appurtenant common interest and who is shown as the owner in the records of the land registry office in which the description of the corporation is registered, and includes a mortgagee in possession and a declarant with respect to any unit in which the declarant has not transferred the leasehold interest to another person but does not include a tenant of the owner,
- (c) in relation to a common elements condominium corporation, a person, including the declarant, who owns a common interest in the common elements and a freehold interest in the parcel of land to which the common interest is attached as described in the declaration and who is shown as the owner in the records of the land registry office in which the description of the corporation is registered; ("propriétaire")

"phased condominium corporation" means a phased condominium corporation to which Part XI applies; ("association condominiale constituée par étape")

"prescribed" means prescribed by the regulations made under this Act; ("prescrit")

"property" means the land, including the buildings on it, and interests appurtenant to the land, as the land and interests are described in the description and includes all land and interests appurtenant to land that are added to the common elements; ("propriété")

"proposed property" means the property described in the declaration and description that are required to be registered to designate a proposed unit as a unit under this Act; ("propriété projetée")

"proposed unit" means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed in registerable form after a declaration and description have been registered in respect of the land; ("partie privative projetée")

"purchaser of a unit", in relation to a leasehold condominium corporation, means the purchaser of an owner's interest in a unit and the appurtenant common interest; ("acquéreur d'une partie privative")

"registered" means registered under the *Land Titles Act* or the *Registry Act* and "register" and "registration" have corresponding meanings; ("enregistré", "enregistrer", "enregistrement")

"reserve fund" means a reserve fund established under section 93; ("fonds de réserve")

"reserve fund study" means a reserve fund study described in section 94; ("étude du fonds de réserve")

"rule" means a rule of a corporation; ("règle")

"status certificate" means a status certificate described in section 76; ("certificat d'information")

"unit" means a part of the property designated as a unit by the description and includes the space enclosed by its boundaries and all of the land, structures and fixtures within this space in accordance with the declaration and description; ("partie privative")

“vacant land condominium corporation” means a vacant land condominium corporation described in subsection 155 (2). (“association condominiale de terrain nu”) 1998, c. 19, s. 1 (1); 2002, c. 17, Sched. F, Table; 2004, c. 8, ss. 46, 47 (3).

Ownership of land

(2) For the purposes of this Act, the ownership of land or of a leasehold interest in land includes the ownership of space or of a leasehold interest in space respectively. 1998, c. 19, s. 1 (2).

Proposed declarant

(3) A reference to a declarant in this Act shall be deemed to include, where applicable, a person who proposes or intends to register a declaration and description. 1998, c. 19, s. 1 (3).

PART II REGISTRATION AND CREATION

CREATION

Registration

2. (1) Subject to the regulations made under this Act and subsection (2), a declaration and description may be registered by or on behalf of the person who owns the freehold or leasehold estate in the land described in the description. 1998, c. 19, s. 2 (1).

Restriction

(2) A declaration and description for a freehold condominium corporation shall not be registered by or on behalf of a person who does not own the freehold estate in the land described in the description. 1998, c. 19, s. 2 (2).

Effect of registration

(3) Upon registration of a declaration and description,

- (a) this Act governs the land and the interests appurtenant to the land, as the land and the interests are described in the description;
- (b) the land described in the description is divided into units and common elements in accordance with the description; and
- (c) a condominium corporation is created. 1998, c. 19, s. 2 (3).

Place of registration

3. (1) The declaration and description shall be registered in,

- (a) the land titles division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office has a land titles division; or
- (b) the registry division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office does not have a land titles division. 1998, c. 19, s. 3 (1).

Index

(2) A land registrar in whose office a declaration and description are registered shall keep an index of the corporations created by the registrations. 1998, c. 19, s. 3 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Index

(2) An index of the corporations created by the registrations shall be kept. 2012, c. 8, Sched. 9, s. 2 (1).

See: 2012, c. 8, Sched. 9, ss. 2 (1), 6.

Same

(3) The index mentioned in subsection (2) shall be in the form approved by the Director of Titles appointed under section 9 of the *Land Titles Act* and shall be known in English as the Condominium Corporations Index and in French as Répertoire des associations condominiales. 1998, c. 19, s. 3 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Same

(3) The index mentioned in subsection (2) shall be in the form approved by the Director of Titles and shall be known in English as the Condominium Corporations Index and in French as Répertoire des associations condominiales. 2012, c. 8, Sched. 9, s. 2 (1).

See: 2012, c. 8, Sched. 9, ss. 2 (1), 6.

Condominium register

(4) A land registrar in whose office a declaration and description are registered shall keep a register in the form approved by the Director of Titles to be known in English as the Condominium Register and in French as Registre des condominiums. 1998, c. 19, s. 3 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed and the following substituted:

Condominium register

(4) A register in the form approved by the Director of Titles to be known in English as the Condominium Register and in French as Registre des condominiums shall be kept. 2012, c. 8, Sched. 9, s. 2 (1).

See: 2012, c. 8, Sched. 9, ss. 2 (1), 6.

Contents of condominium register

(5) Declarations, descriptions, by-laws, notices of termination and other instruments respecting land governed by this Act shall be registered and recorded in the Condominium Register in accordance with the regulations made under this Act and the instructions of the Director of Titles. 1998, c. 19, s. 3 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out "and the instructions of the Director of Titles" and substituting "if any, or the instructions of the Director of Titles if there are no such regulations". See: 2012, c. 8, Sched. 9, ss. 2 (2), 6.

Real property Acts

4. (1) The *Land Titles Act* or the *Registry Act*, as the case may be, applies in respect of property governed by this Act but, if the provisions of either of those Acts conflict with the provisions of this Act, the provisions of this Act prevail. 1998, c. 19, s. 4 (1).

Rights of tenants

(2) The registration of a declaration and description shall not terminate or otherwise affect the rights under the *Residential Tenancies Act, 2006* of a person who, at the time of the registration, is a tenant of the property or of a part of the property. 1998, c. 19, s. 4 (4); 2006, c. 17, s. 248 (1).

No termination of tenancy

(3) The registration of a declaration and description does not constitute grounds for a landlord to give notice of termination under Part V of the *Residential Tenancies Act, 2006* to a tenant described in subsection (2). 1998, c. 19, s. 4 (4); 2006, c. 17, s. 248 (2).

(4) SPENT: 1998, c. 19, s. 4 (4).

Corporation

5. (1) A corporation created or continued under this Act is a corporation without share capital whose members are the owners. 1998, c. 19, s. 5 (1).

Name

(2) The land registrar shall assign a name to each corporation in accordance with the regulations made under this Act. 1998, c. 19, s. 5 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed and the following substituted:

Name

(2) A name shall be assigned to each corporation in accordance with the regulations made under this Act, if any, or the instructions of the Director of Titles if there are no such regulations. 2012, c. 8, Sched. 9, s. 3.

See: 2012, c. 8, Sched. 9, ss. 3, 6.

Other Act

(3) The *Corporations Act* does not apply to the corporation. 1998, c. 19, s. 5 (3).

Same

(4) Subject to the regulations made under this Act, the *Corporations Information Act* applies to the corporation. 1998, c. 19, s. 5 (4).

Types of corporations

6. (1) Corporations under this Act consist of the following types:

1. Freehold condominium corporations.
2. Leasehold condominium corporations. 1998, c. 19, s. 6 (1).

Types of freehold corporations

(2) Freehold condominium corporations consist of the following types:

1. Common elements condominium corporations.
2. Phased condominium corporations.
3. Vacant land condominium corporations.
4. Standard condominium corporations that are not any of the corporations mentioned in paragraphs 1, 2 and 3. 1998, c. 19, s. 6 (2).

Restriction on registration

(3) A declaration and description shall not be registered unless the registration would create a freehold condominium corporation or a leasehold condominium corporation. 1998, c. 19, s. 6 (3).

Indication in declaration

(4) The declaration shall state,

- (a) whether the corporation is a freehold condominium corporation or a leasehold condominium corporation; and
- (b) if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is. 1998, c. 19, s. 6 (4).

DECLARATION AND DESCRIPTION

Requirements for declaration

7. (1) A declaration shall not be registered unless the declarant has executed it in the manner prescribed by the Act under which it is to be registered. 1998, c. 19, s. 7 (1).

Contents

(2) A declaration shall contain,

- (a) a statement that this Act governs the land and interests appurtenant to the land, as the land and the interests are described in the description;
- (b) the consent of every person having a registered mortgage against the land or interests appurtenant to the land, as the land and the interests are described in the description;
- (c) a statement of the proportions, expressed in percentages, of the common interests appurtenant to the units;
- (d) a statement of the proportions, expressed in percentages allocated to the units, in which the owners are to contribute to the common expenses;
- (e) an address for service, a municipal address for the corporation, if available, and the mailing address of the corporation if it differs from its address for service or municipal address;
- (f) a specification of all 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;
- (g) a statement of all conditions that the approval authority, in approving or exempting the description under section 9, requires the declaration to mention; and
- (h) all other material that the regulations made under this Act require. 1998, c. 19, s. 7 (2).

Consent

(3) A person shall not withhold the consent mentioned in clause (2) (b) by reason only of the failure of the declarant to enter into a specified number of agreements of purchase and sale for the sale of proposed units. 1998, c. 19, s. 7 (3).

Additional contents

- (4) In addition to the material mentioned in subsection (2) and in any other section in this Act, a declaration may contain,
- (a) a statement specifying the common expenses of the corporation;
 - (b) conditions or restrictions with respect to the occupation and use of the units or common elements;
 - (c) conditions or restrictions with respect to gifts, leases and sales of the units and common interests;
 - (d) a list of the responsibilities of the corporation consistent with its objects and duties; and
 - (e) a description of the allocation of obligations to maintain the units and common elements and to repair them after damage, which allocation has been done in accordance with this Act. 1998, c. 19, s. 7 (4).

Inconsistent provisions

(5) If any provision in a declaration is inconsistent with the provisions of this Act, the provisions of this Act prevail and the declaration shall be deemed to be amended accordingly. 1998, c. 19, s. 7 (5).

Requirements for description

8. (1) Subject to the regulations made under this Act, a description shall contain,
- (a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;
 - (b) architectural plans of the buildings and, if there are any, structural plans of the buildings;
 - (c) a specification of the boundaries of each unit by reference to the buildings or other monuments;
 - (d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
 - (e) a certificate of an architect that all buildings have been constructed in accordance with the regulations and, if there are structural plans, a certificate of an engineer that all buildings have been constructed in accordance with the regulations;
 - (f) a certificate signed by an Ontario land surveyor licensed under the *Surveyors Act* stating that the diagrams of the units are substantially accurate;
 - (g) a description of all interests appurtenant to the land that are included in the property; and
 - (h) all other material that the regulations made under this Act require. 1998, c. 19, s. 8 (1).

Preparation of documents

(2) A survey, plan, specification, diagram, certificate or description mentioned in subsection (1) shall be prepared in accordance with the regulations made under this Act. 1998, c. 19, s. 8 (2).

Common elements, units in building

- (3) A description shall not be registered unless,
- (a) the property includes common elements; and
 - (b) each unit for residential purposes includes one or more buildings or is included in a building. 1998, c. 19, s. 8 (3).

Approval by examiner of surveys

(4) The examiner of surveys appointed under the *Land Titles Act* may require a description or an amendment to a description to be submitted to the examiner of surveys for approval before it is registered. 1998, c. 19, s. 8 (4).

Same

(5) The examiner of surveys shall approve the description or the amendment to the description if satisfied that the document submitted meets the requirements of this section. 1998, c. 19, s. 8 (5).

PLANNING ACT

Subdivision control

9. (1) Section 50 of the *Planning Act* does not apply in respect of,
- (a) dealings with whole units and common interests; or

(b) easements transferred by or reserved to the corporation. 1998, c. 19, s. 9 (1).

Approvals of descriptions

(2) Subject to this section, the provisions of sections 51, 51.1 and 51.2 of the *Planning Act* that apply to a plan of subdivision apply with necessary modifications to a description or an amendment to a description. 1998, c. 19, s. 9 (2).

Registration

(3) A description or an amendment to a description shall not be registered unless,

(a) the approval authority has approved it; or

(b) the approval authority has exempted it from those provisions of sections 51 and 51.1 of the *Planning Act* that would normally apply to it under subsection (2) and it is accompanied by a certificate of exemption issued by the approval authority. 1998, c. 19, s. 9 (3).

Conversion of rented residential premises

(4) If an applicant makes an application for approval in respect of a property that includes a building or related group of buildings containing one or more premises that is used as a rented residential premises or that has been used as a rented residential premises and is vacant, the approval authority may, after consulting with the council of the local municipality in which the property is located if the approval authority is not that municipality, require the applicant to have a person who holds a certificate of authorization within the meaning of the *Professional Engineers Act* or a certificate of practice within the meaning of the *Architects Act* or another qualified person inspect the property and report to the approval authority all matters that the approval authority considers may be of concern. 1998, c. 19, s. 9 (4).

Additional conditions

(5) In addition to the conditions that it may impose under subsection 51 (25) of the *Planning Act*, the approval authority that receives an application described in subsection (4) may impose the conditions that it considers are reasonable in light of the report mentioned in subsection (4). 1998, c. 19, s. 9 (5).

Application for exemption

(6) Before making an application under subsection 51 (16) of the *Planning Act*, the owner of a property or a person authorized in writing by the owner of the property may apply to the approval authority to have the description or any part of the description exempted from those provisions of sections 51 and 51.1 of the *Planning Act* that would normally apply to it under subsection (2). 1998, c. 19, s. 9 (6).

Individual exemption

(7) The approval authority may grant an exemption if it believes the exemption is appropriate in the circumstances. 1998, c. 19, s. 9 (7).

Exemption made by Minister

(8) If the Minister of Municipal Affairs and Housing is the approval authority, that Minister may by regulation provide that the provisions of sections 51 and 51.1 of the *Planning Act* that apply to a plan of subdivision do not apply to a class of description or an amendment to a class of description specified in the regulation. 1998, c. 19, s. 9 (8).

Effect of regulation

(9) The regulation may be restricted to specified geographic areas of Ontario. 1998, c. 19, s. 9 (9).

Exemption made by municipality

(10) If the Minister of Municipal Affairs and Housing is not the approval authority, the approval authority may by by-law provide that the provisions of sections 51 and 51.1 of the *Planning Act* that apply to a plan of subdivision do not apply to a class of description or an amendment to a class of description specified in the by-law. 1998, c. 19, s. 9 (10).

Effect of by-law

(11) The by-law may be restricted to specified geographic areas within the geographic area of the authority. 1998, c. 19, s. 9 (11).

s. 52 of *Planning Act*

(12) Section 52 of the *Planning Act* applies in respect of a description of a vacant land condominium corporation but does not apply in respect of a description of any other corporation. 1998, c. 19, s. 9 (12).

PART III OWNERSHIP

Type of property

10. Units and common elements are real property for all purposes. 1998, c. 19, s. 10.

Ownership of property

11. (1) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of the owner's unit. 1998, c. 19, s. 11 (1).

Same, common elements

(2) The owners are tenants in common of the common elements and an undivided interest in the common elements is appurtenant to each owner's unit. 1998, c. 19, s. 11 (2).

Common interests

(3) The proportions of the common interests are those expressed in the declaration. 1998, c. 19, s. 11 (3).

No separation

(4) The ownership of a unit shall not be separated from the ownership of the common interest and an instrument that purports to separate the ownership of a unit from a common interest is void. 1998, c. 19, s. 11 (4).

No division

(5) Except as provided by this Act, the common elements shall not be partitioned or divided. 1998, c. 19, s. 11 (5).

Easements

12. (1) The following easements are appurtenant to each unit and shall be for the benefit of the owner of the unit and the corporation:

1. An easement for the provision of a service through the common elements or any other unit.
2. An easement for support by all buildings and structures necessary for providing support to the unit.
3. If a building or a part of a building moves after registration of the declaration and description or after having been damaged and repaired but has not been restored to the position occupied at the time of registration of the declaration and description, an easement for exclusive use and occupation over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.
4. If a corporation is entitled to use a service or facility in common with another corporation, an easement for access to and for the installation and maintenance of the service or facility over the land of the other corporation, described in accordance with the regulations made under this Act. 1998, c. 19, s. 12 (1).

Same, common elements

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

1. An easement for the provision of a service through a unit or through a part of the common elements of which an owner has exclusive use.
2. An easement for support by all units necessary for providing support. 1998, c. 19, s. 12 (2).

Effect on encumbrances

13. Upon the registration of the declaration and description, an encumbrance against the common elements is no longer enforceable against the common elements but is enforceable against all the units and common interests. 1998, c. 19, s. 13.

Discharge of encumbrances

14. (1) If an encumbrance registered before the registration of the declaration and description is, by virtue of section 13, enforceable against all the units of a corporation and their common interests, an owner may discharge the portion of the encumbrance that is applicable to the owner's unit and common interest by paying to the encumbrancer the portion of the amount owing on account of principal and interest under the encumbrance that is attributable to the owner's common interest as specified in the declaration. 1998, c. 19, s. 14 (1).

Form

(2) Upon payment of the portion of the encumbrance sufficient to discharge a unit and common interest, and upon demand, the encumbrancer shall give to the owner a discharge of that unit and common interest in accordance with the requirements of the regulations made under this Act. 1998, c. 19, s. 14 (2).

Assessment

15. (1) Each unit, together with its appurtenant common interest, constitutes a parcel for the purpose of municipal assessment and taxation. 1998, c. 19, s. 15 (1).

Common elements

(2) Subject to subsection (3), the common elements of a corporation that is not a common elements condominium corporation do not constitute a parcel for the purpose of municipal assessment and taxation. 1998, c. 19, s. 15 (2).

Exception

(3) A part of the common elements of a corporation that is not a common elements condominium corporation constitutes a separate parcel for the purpose of municipal assessment and taxation if it is leased for business purposes under section 21, the lessee carries on an undertaking for gain on it and it is in the commercial property class prescribed under the *Assessment Act*. 1998, c. 19, s. 15 (3).

Common elements condominium corporation

(4) The common elements of a common elements condominium corporation constitute a parcel for the purpose of municipal assessment and taxation within each municipality in which the common elements or a part of them are located and the municipal taxes levied on the parcel or parcels shall form part of the common expenses of the corporation. 1998, c. 19, s. 15 (4).

PART IV CORPORATION

GENERAL

Seal

16. (1) The corporation shall have a seal that the board shall adopt and may change. 1998, c. 19, s. 16 (1).

Name

(2) The name of the corporation shall appear in legible characters on the seal. 1998, c. 19, s. 16 (2).

Objects

17. (1) The objects of the corporation are to manage the property and the assets, if any, of the corporation on behalf of the owners. 1998, c. 19, s. 17 (1).

Duties

(2) The corporation has a duty to control, manage and administer the common elements and the assets of the corporation. 1998, c. 19, s. 17 (2).

Ensuring compliance

(3) The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 17 (3).

Dealing with title to real property

17.1 Nothing in this Act confers on the corporation the power to grant, transfer, lease, release, dispose of or otherwise deal with the title to any real property that the corporation does not own or any interest in real property where the corporation does not own the interest, unless this Act specifically confers the power on the corporation. 2000, c. 26, Sched. B, s. 7 (1).

Assets

18. (1) The corporation may own, acquire, encumber and dispose of real and personal property only for purposes that are consistent with the objects and duties of the corporation. 1998, c. 19, s. 18 (1).

Interests in real property

(1.1) The assets of the corporation do not include any real property that the corporation does not own or any interest in real property where the corporation does not own the interest. 2000, c. 26, Sched. B, s. 7 (2).

Interest in assets

(2) The owners share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the by-laws. 1998, c. 19, s. 18 (2).

Validity of easement

(3) A grant or transfer of an easement to the corporation is valid even though the corporation does not own land capable of being benefited by the easement. 1998, c. 19, s. 18 (3).

Right of entry

19. On giving reasonable notice, the corporation or a person authorized by the corporation may enter a unit or a part of the common elements of which an owner has exclusive use at any reasonable time to perform the objects and duties of the corporation or to exercise the powers of the corporation. 1998, c. 19, s. 19.

Easements described in declaration or phase

20. (1) An easement described in subsection (2) is created,

- (a) upon the registration of a declaration and description that creates a corporation, if the easement is described in the declaration and description; or
- (b) upon the registration of an amendment to a declaration and description that creates a phase within the meaning of Part XI in a phased condominium corporation, if the easement is described in the amendment. 1998, c. 19, s. 20 (1).

Application

(2) Subsection (1) applies to an easement that,

- (a) imposes a benefit or a burden on land owned by the declarant other than the property; or
- (b) the approval authority requires as a condition of approving the declaration and description for the corporation. 1998, c. 19, s. 20 (2).

Creation of easement

(3) No deed or other document is required to be registered or delivered to the owner of the land benefited by an easement that is created under subsection (1) in order for the easement to be made effective. 1998, c. 19, s. 20 (3).

Validity of easement

(4) An easement that is created under subsection (1) is valid even though the declarant owns the land to be benefited or burdened by the easement in addition to owning the land relating to the easement that is described in the description. 1998, c. 19, s. 20 (4).

Easements and lease of common elements

21. (1) The corporation may by by-law,

- (a) lease a part of the common elements, except a part that the declaration specifies is to be used only by the owners of one or more designated units and not by all the owners;
- (b) grant or transfer an easement or licence through the common elements; or
- (c) release an easement that is part of the common elements. 1998, c. 19, s. 21 (1); 2000, c. 26, Sched. B, s. 7 (3).

Binding on all owners

(2) A lease, grant, transfer or release mentioned in subsection (1), signed by the authorized officers of the corporation, affects the interest of every owner in the common elements as if the lease, grant, transfer or release had been executed by that owner. 1998, c. 19, s. 21 (2); 2000, c. 26, Sched. B, s. 7 (4).

Telecommunications agreements

22. (1) In this section,

“telecommunications” means the emission, transmission or reception of any combination of signs, signals, writing, images, sound, data, alphanumeric characters or intelligence of any nature by wire, cable, radio or an optical, electromagnetic or any similar technical system; (“télécommunications”)

“telecommunications agreement” means an agreement for the provision of services or facilities related to telecommunications to, from or within the property of a corporation and includes a grant or transfer of an easement, lease or licence through the

property of a corporation for the purposes of telecommunications. ("convention concernant les télécommunications") 1998, c. 19, s. 22 (1).

By-law not required

- (2) Despite subsection 21 (1), a corporation may, by resolution of the board without a by-law,
- (a) make an agreement for a network upgrade to a telecommunications system that services the units of the corporation;
 - (b) make an agreement for a telecommunications system that is not connected to a telecommunications system that services the units of the corporation; or
 - (c) amend an agreement for a telecommunications system that services the units of the corporation to permit the other party to the agreement to supply and invoice part or all of the services directly to the unit owners. 1998, c. 19, s. 22 (2).

Notice required

(3) Subsections 97 (3), (4), (5) and (6) apply to an agreement described in subsection (2) as if it were a change in a service that a corporation provides to the owners. 1998, c. 19, s. 22 (3).

Charge to unit owners

(4) The cost of the services that are invoiced directly to the unit owners under clause (2) (c) shall not form part of the common expenses, despite anything in the declaration. 1998, c. 19, s. 22 (4).

Telecommunications easement

(5) A corporation and a party, if any, that has entered into a telecommunications agreement with the corporation shall have a non-exclusive easement over the part of the property described in clause (b) for the purpose of installing and using a telecommunications system if,

- (a) the corporation was created on or after the day this section comes into force and includes one or more units for residential purposes;
- (b) part of the property is designed to control, facilitate or provide telecommunications to, from or within the property; and
- (c) the corporation does not have an easement over the property described in the description or a right to use the property that is adequate for,
 - (i) the telecommunications agreement that it has entered into with respect to the property, if it has entered into such an agreement, or
 - (ii) the telecommunications system that the corporation intends to install and use on the property, if it has not entered into a telecommunications agreement with respect to the property. 1998, c. 19, s. 22 (5).

Duty to accommodate easement

(6) If a telecommunications system installed on the part of the property described in clause (5) (b) interferes with a telecommunications system that the corporation intends to have installed and to use on the property described in the description, the owner of the part of the property shall, upon 30 days written notice by the owner of the easement described in subsection (5), take all necessary steps that are reasonable to accommodate the intended telecommunications system. 1998, c. 19, s. 22 (6).

Validity of easement

(7) The easement is valid even though the corporation and the party, if any, that has entered into a telecommunications agreement with the corporation own no land to be benefited by the easement. 1998, c. 19, s. 22 (7).

Easements non-exclusive

(8) If the property of a corporation that includes one or more units for residential purposes is subject to an easement for the purposes of telecommunications and at least 10 years have passed since the later of the execution of the grant of the easement and the registration of the declaration and description, then, despite anything in the grant, the easement shall be deemed to be non-exclusive. 1998, c. 19, s. 22 (8).

Termination of agreements

(9) A corporation that includes one or more units for residential purposes may terminate a telecommunications agreement if,

- (a) at least 10 years have passed since the later of the execution of the agreement and the registration of the declaration and description;
- (b) the board has, by resolution, approved the termination of the agreement;
- (c) the owners of more than 50 per cent of the units at the time the board passes the resolution consent in writing to the termination of the agreement; and
- (d) the corporation has given the person 120 days written notice of the termination. 1998, c. 19, s. 22 (9).

Exception

- (10) Subsection (9) does not apply to a telecommunications agreement if,
 - (a) the corporation entered into the agreement after a new board is elected at a turn-over meeting held under section 43;
 - (b) the agreement is non-exclusive; and
 - (c) the agreement makes allowance for the installation of alternate telecommunications systems. 1998, c. 19, s. 22 (10).

Personal property

(11) If, under subsection (9), a corporation terminates a telecommunications agreement, a party to the agreement may, on giving reasonable notice to the corporation, remove personal property that it owns and that is located on the property that was subject to the agreement within 30 days after the termination of the agreement. 1998, c. 19, s. 22 (11).

Duties on removal

- (12) A party removing personal property under subsection (11) shall,
 - (a) carry out the removal in a manner that facilitates the installation of other similar personal property for the purposes of telecommunications; and
 - (b) reimburse the corporation for the damage, if any, that the removal causes to the property of the corporation. 1998, c. 19, s. 22 (12).

Abandonment

(13) A party to a telecommunications agreement that has the right to remove its personal property under subsection (11) shall be deemed to have abandoned the property if it does not remove the property within the time specified in that subsection. 1998, c. 19, s. 22 (13).

Action by corporation

23. (1) Subject to subsection (2), in addition to any other remedies that a corporation may have, a corporation may, on its own behalf and on behalf of an owner,
- (a) commence, maintain or settle an action for damages and costs in respect of any damage to common elements, the assets of the corporation or individual units; and
 - (b) commence, maintain or settle an action with respect to a contract involving the common elements or a unit, even though the corporation was not a party to the contract in respect of which the action is brought. 1998, c. 19, s. 23 (1).

Notice to owners

(2) Before commencing an action mentioned in subsection (1), the corporation shall give written notice of the general nature of the action to all persons whose names are in the record of the corporation maintained under subsection 47 (2) except if,

- (a) the action is to enforce a lien of the corporation under section 85 or to fulfil its duty under subsection 17 (3); or
- (b) the action is commenced in the Small Claims Court. 1998, c. 19, s. 23 (2).

Costs

(3) Unless the board determines otherwise, the legal and court costs in an action that the corporation commences or maintains in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected. 1998, c. 19, s. 23 (3).

Judgment as asset

(4) A judgment for payment in favour of the corporation in an action that the corporation commences or maintains on its own behalf is an asset of the corporation. 1998, c. 19, s. 23 (4).

Corporation may be sued

(5) The corporation may, as representative of the owners of the units, be sued in respect of any matter relating to the common elements or assets of the corporation. 1998, c. 19, s. 23 (5).

Judgment against corporation

(6) A judgment for the payment of money against the corporation is also a judgment against each owner at the time of judgment for a portion of the judgment determined by the proportions specified in the declaration for sharing the common interests. 1998, c. 19, s. 23 (6).

Notices under the *Expropriations Act*

24. (1) For the purposes of the *Expropriations Act*, if the land to be expropriated is part of the common elements of a corporation and does not include any units, any document that an expropriating authority is required or entitled to serve on the owner of the land, including a notice, an appraisal report and an offer of compensation, is sufficiently served on the owners of the land if the expropriating authority serves the document,

- (a) on the corporation; and
- (b) if the land to be expropriated is part of the common elements that the declaration specifies are for the exclusive use of the owners of one or more of the units of the corporation, but not all the owners, on the owners of those units. 1998, c. 19, s. 24 (1).

Notice to owners

(2) Within 15 days of being served with a document under subsection (1), the corporation shall notify all persons whose names are in the record of the corporation maintained under subsection 47 (2) that it has been served with a document for the purposes of the *Expropriations Act* and shall make a copy of the document available for examination by them. 1998, c. 19, s. 24 (2).

Corporation acting for owners

(3) For the purposes of the *Expropriations Act*, all the rights under that Act of the owners of the land to be expropriated in respect of which a document has been served on the corporation under subsection (1) shall be transferred to and exercised by the corporation, subject to section 126. 1998, c. 19, s. 24 (3).

Notices under the *Planning Act*

25. A corporation that is served with a notice under the *Planning Act* shall, within 15 days of being served, notify all persons whose names are in the record of the corporation maintained under subsection 47 (2) that it has been served with a notice under that Act and shall make a copy of the notice available for examination by them. 1998, c. 19, s. 25.

Occupier's liability

26. For the purposes of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements. 1998, c. 19, s. 26.

DIRECTORS AND OFFICERS

Board of directors

27. (1) A board of directors shall manage the affairs of the corporation. 1998, c. 19, s. 27 (1).

Number

(2) Subject to subsection 42 (4), the board shall consist of at least three persons or such greater number as the by-laws may provide. 1998, c. 19, s. 27 (2).

Change in number

(3) The corporation may by by-law increase or, subject to subsection (2), decrease the number of directors as set out in its by-laws. 1998, c. 19, s. 27 (3).

Election of directors

28. (1) Subject to subsection 42 (1), the owners shall elect the board of directors in accordance with this Act and the by-laws. 1998, c. 19, s. 28 (1).

Notice of candidates

(2) The notice of a meeting to elect one or more directors shall include the name and address of each individual who has notified the board in writing of the intention to be a candidate in the election as of the fourth day before the notice is sent. 1998, c. 19, s. 28 (2).

Notice of owner-occupant position

(3) If, under subsection 51 (6), one position on the board is reserved for voting by owners of owner-occupied units, the notice of meeting shall include,

- (a) a statement that one position on the board is reserved for voting by owners of owner-occupied units; and
- (b) a statement indicating which persons have notified the board in writing as of the day before the notice is sent that they intend to be candidates for the position on the board reserved for voting by owners of owner-occupied units. 1998, c. 19, s. 28 (3).

Qualifications

29. (1) No person shall be a director if,
- (a) the person is under eighteen years of age;
 - (b) the person is an undischarged bankrupt; or
 - (c) the person is incapable of managing property within the meaning of the *Substitute Decisions Act, 1992*. 1998, c. 19, s. 29 (1); 2009, c. 33, Sched. 2, s. 17 (1).

Disqualification

- (2) A person immediately ceases to be a director if,
- (a) the person becomes an undischarged bankrupt or incapable of managing property within the meaning of the *Substitute Decisions Act, 1992*; or
 - (b) a certificate of lien has been registered under subsection 85 (2) against a unit owned by the person and the person does not obtain a discharge of the lien under subsection 85 (7) within 90 days of the registration of the lien. 1998, c. 19, s. 29 (2); 2009, c. 33, Sched. 2, s. 17 (2).

Consent

30. (1) A person shall not be elected or appointed as a director unless the person consents. 1998, c. 19, s. 30 (1).

Deemed consent

(2) A person shall be deemed to consent if the person is present at the meeting when elected or appointed and does not refuse to act as a director. 1998, c. 19, s. 30 (2).

Written consent

(3) A person who is not present at the meeting may be elected or appointed if the person consents in writing to act as director before the meeting or within 10 days after the meeting. 1998, c. 19, s. 30 (3).

Non-compliance

(4) The election or appointment of a person as director contrary to this section is ineffective. 1998, c. 19, s. 30 (4).

Term

31. (1) Except in the case of directors appointed to the first board of directors under subsection 42 (1), a director is elected for a term of three years or such lesser period as the by-laws may provide. 1998, c. 19, s. 31 (1).

Same

(2) Despite subsection (1), a director may continue to act until a successor is elected. 1998, c. 19, s. 31 (2).

Conduct of business

32. (1) Subject to subsection 42 (5), the board of a corporation shall not transact any business of the corporation except at a meeting of directors at which a quorum of the board is present. 1998, c. 19, s. 32 (1).

Quorum

(2) A quorum for the transaction of business is a majority of the members of the board. 1998, c. 19, s. 32 (2).

Removal

33. (1) Subject to subsection 51 (8), a director, other than a director on the first board, may be removed before the expiration of the director's term of office by a vote of the owners at a meeting duly called for the purpose where the owners of more than 50 per cent of all of the units in the corporation vote in favour of removal. 1998, c. 19, s. 33 (1).

Replacement

(2) In accordance with the by-laws dealing with the election of directors, the owners may, at the meeting, elect any person qualified to be a member of the board for the remainder of the term of a director who has been removed. 1998, c. 19, s. 33 (2).

Vacancy

34. (1) If a vacancy arises in the board, the remaining directors may exercise all the powers of the board as long as a quorum of the board remains in office. 1998, c. 19, s. 34 (1).

Replacement made by board

(2) If a vacancy arises in the board and a quorum of the board remains in office, the majority of the remaining members of the board may appoint any person qualified to be a member of the board to fill the vacancy until the next annual general meeting. 1998, c. 19, s. 34 (2).

Replacement made by owners

(3) Subject to subsection 51 (6), at the annual general meeting mentioned in subsection (2) the owners shall elect a person to fill the vacancy that arose under that subsection who shall hold office for the remainder of the term of the director whose position became vacant. 1998, c. 19, s. 34 (3).

Election when no quorum

(4) If a vacancy arises in the board and there are not enough directors remaining in office to constitute a quorum, the remaining directors shall, within 30 days of losing the quorum, call and hold a meeting of owners to fill all vacancies in the board. 1998, c. 19, s. 34 (4).

Owner may call meeting

(5) If the directors do not call and hold the meeting or if there are no directors then in office, an owner may call the meeting. 1998, c. 19, s. 34 (5).

Reimbursement of cost

(6) Upon request, the corporation shall reimburse an owner who calls a meeting under subsection (5) for the reasonable costs incurred in calling the meeting. 1998, c. 19, s. 34 (6).

Increase

(7) Despite subsection (2), a vacancy resulting from an increase in the number of directors shall be filled only by election at a meeting of owners duly called for that purpose and the directors so elected shall not act until the by-law increasing the number of directors is registered under subsection 56 (9). 1998, c. 19, s. 34 (7).

Meetings of directors

35. (1) In addition to meetings of the directors required by the by-laws of the corporation, a quorum of the directors may, at any time, call a meeting for the transaction of any business. 1998, c. 19, s. 35 (1).

Notice

(2) The person calling a meeting of directors shall give a written notice of the meeting to every director of the corporation,

(a) at least 10 days before the day of the meeting, unless the by-laws specify otherwise; and

(b) by delivering it to the director personally or by sending it by prepaid mail, courier delivery or electronic communication addressed to the director at the latest address as shown on the records of the corporation, unless the by-laws specify otherwise. 1998, c. 19, s. 35 (2).

Content of notice

(3) The notice shall state the time and place of the meeting and the general nature of the business to be discussed at the meeting. 1998, c. 19, s. 35 (3).

Waiver of notice

(4) A director who attends a meeting shall be deemed to have waived the right to object to a failure to give the required notice unless the director expressly objects to the failure at the meeting. 1998, c. 19, s. 35 (4).

Teleconference

(5) A meeting of the directors may be held by teleconference or another form of communications system that allows the directors to participate concurrently if,

- (a) the by-laws authorize those means for holding a meeting of the directors; and
- (b) all directors of the corporation consent to the means used for holding the meeting. 1998, c. 19, s. 35 (5).

Officers

36. (1) A corporation shall have a president and a secretary and all other officers that are provided for by by-law or by resolution of the directors. 1998, c. 19, s. 36 (1).

Election and appointment

- (2) Subject to the by-laws, the directors,
 - (a) shall elect the president from among themselves;
 - (b) shall appoint or elect the secretary; and
 - (c) may appoint or elect one or more vice-presidents or other officers. 1998, c. 19, s. 36 (2).

Holding several offices

- (3) The same person may hold two or more offices of the corporation. 1998, c. 19, s. 36 (3).

Standard of care

37. (1) Every director and every officer of a corporation in exercising the powers and discharging the duties of office shall,

- (a) act honestly and in good faith; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. 1998, c. 19, s. 37 (1).

Validity of acts

(2) The acts of a director or officer are valid despite any defect that may afterwards be discovered in the person's election, appointment or qualifications. 1998, c. 19, s. 37 (2).

Liability of directors

(3) A director shall not be found liable for a breach of a duty mentioned in subsection (1) if the breach arises as a result of the director's relying in good faith upon,

- (a) financial statements of the corporation that the auditor in a written report, an officer of the corporation or a manager under an agreement for the management of the property represents to the director as presenting fairly the financial position of the corporation in accordance with generally accepted accounting principles; or
- (b) a report or opinion of a lawyer, public accountant, engineer, appraiser or other person whose profession lends credibility to the report or opinion. 1998, c. 19, s. 37 (3); 2004, c. 8, s. 47 (1).

Indemnification

38. (1) Subject to subsection (2), the by-laws of a corporation may provide that every director and every officer of the corporation and the person's heirs, executors, administrators, estate trustees and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against,

- (a) any liability and all costs, charges and expenses that the director or officer sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against the person for or in respect of anything that the person has done, omitted to do or permitted in respect of the execution of the duties of office; and
- (b) all other costs, charges and expenses that the person sustains or incurs in respect of the affairs of the corporation. 1998, c. 19, s. 38 (1).

Not for breach of duty

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that the person sustains or incurs in or about an action, suit or other proceeding as a result of which the person is adjudged to be in breach of the duty to act honestly and in good faith. 1998, c. 19, s. 38 (2).

Insurance

39. If the insurance is reasonably available, a corporation shall purchase and maintain insurance for the benefit of a director or officer against the matters described in clauses 38 (1) (a) and (b) except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a breach of the duty to act honestly and in good faith. 1998, c. 19, s. 39.

Disclosure by director of interest

40. (1) A director of a corporation who has, directly or indirectly, an interest in a contract or transaction to which the corporation is a party or a proposed contract or transaction to which the corporation will be a party, shall disclose in writing to the corporation the nature and extent of the interest. 1998, c. 19, s. 40 (1).

Interest to be material

(2) Subsection (1) does not apply to a contract or transaction or a proposed contract or transaction unless both it and the director's interest in it are material. 1998, c. 19, s. 40 (2).

Purchase of property

(3) If the contract or transaction or the proposed contract or transaction to which subsection (1) applies involves the purchase or sale of real or personal property by the corporation that the seller acquired within five years before the date of the contract or transaction or the proposed contract or transaction, the director shall disclose the cost of the property to the seller, to the extent to which that information is within the director's knowledge or control. 1998, c. 19, s. 40 (3).

Time of disclosure

(4) The disclosure required by this section shall be made,

- (a) at the meeting of the board at which the contract or transaction or the proposed contract or transaction is first considered;
- (b) if the director is not as of the date of the meeting mentioned in clause (a) interested in the contract or transaction or the proposed contract or transaction, at the next meeting of the directors held after the director becomes so interested;
- (c) if the director becomes interested in the contract or transaction after it is entered into, at the first meeting of the directors held after the director becomes so interested; or
- (d) if the contract or transaction or the proposed contract or transaction is one that in the ordinary course of the corporation's business would not require approval by the directors or owners, at the first meeting of the directors held after the director becomes aware of the contract or transaction or the proposed contract or transaction. 1998, c. 19, s. 40 (4).

Minutes

(5) The board shall enter the disclosure made by a director under this section in the minutes of the meeting of the board at which the disclosure was made. 1998, c. 19, s. 40 (5).

Right to vote

(6) The director shall not be present during the discussion at a meeting, vote or be counted in the quorum on a vote with respect to a contract or transaction or a proposed contract or transaction to which subsection (1) applies unless the director's interest in it,

- (a) is or would be limited solely to the insurance described in section 39 or remuneration as a director, officer or employee of the corporation; or
- (b) arises or would arise solely because the director is a director, officer or employee of the declarant, if the director has been appointed to the first board by the declarant under subsection 42 (1). 1998, c. 19, s. 40 (6).

Effect of disclosure

(7) A director who has complied with the requirements of this section and who was acting honestly and in good faith at the time the contract or transaction was entered into, is not, by reason only of holding the office of director, accountable to the corporation or to its owners for any profit or gain realized from the contract or transaction, and the contract or transaction is not voidable by reason only of the director's interest in it. 1998, c. 19, s. 40 (7).

Confirmation by owners

(8) Despite anything in this section, a director who has acted honestly and in good faith is not accountable to the corporation or to the owners for any profit or gain realized from the contract or transaction by reason only of holding the office of director, and the contract or transaction is not voidable by reason only of the director's interest in it if,

- (a) the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a meeting of owners duly called for that purpose; and
- (b) the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting. 1998, c. 19, s. 40 (8).

Disclosure by officer of interest

41. (1) An officer of a corporation who is not a director and who has, directly or indirectly, an interest in a contract or transaction to which the corporation is a party or a proposed contract or transaction to which the corporation will be a party, shall disclose in writing to the corporation the nature and extent of the interest. 1998, c. 19, s. 41 (1).

Time of disclosure

(2) An officer who is required to make a disclosure under subsection (1) shall make the disclosure at the first meeting of the board held after the officer becomes aware of the contract or transaction or the proposed contract or transaction. 1998, c. 19, s. 41 (2).

Application of s. 40

(3) Subsections 40 (2), (3), (5), (7) and (8) apply to an officer of a corporation who is not a director as if all references to a director in those subsections were references to an officer. 1998, c. 19, s. 41 (3).

TRANSFER OF CONTROL BY DECLARANT

First board of directors

42. (1) Within 10 days after the registration of the declaration and description, the declarant shall appoint the first board of a corporation. 1998, c. 19, s. 42 (1).

Replacements

(2) The declarant may revoke the appointment of a director to the first board and appoint another director to the first board who shall hold office until a new board is elected at a turn-over meeting held under section 43. 1998, c. 19, s. 42 (2).

Term

(3) The first board shall hold office until a new board is elected at a turn-over meeting held under section 43. 1998, c. 19, s. 42 (3).

Number

(4) The first board shall consist of three persons or such greater number as the declaration provides. 1998, c. 19, s. 42 (4).

Conduct of business

(5) A written resolution that is adopted by the first board before the owners elect a director to the first board under subsection (8) and that is signed by all the directors entitled to vote on the resolution at a meeting of the first board, is valid even though no meeting is held to vote on the resolution. 1998, c. 19, s. 42 (5).

Owners' meeting

- (6) Subject to subsection (7), the first board shall call and hold a meeting of owners by the later of,
- (a) the 30th day after the day by which the declarant has transferred 20 per cent of the units in the corporation; and
 - (b) the 90th day after the declarant transfers the first unit in the corporation. 1998, c. 19, s. 42 (6).

Exception

(7) The first board is not required to call or hold the meeting mentioned in subsection (6) if, by the day set for the meeting, the declarant no longer owns a majority of the units and advises the first board in writing of that fact. 1998, c. 19, s. 42 (7).

Election of directors

(8) At the meeting mentioned in subsection (6), the owners, other than the declarant, may elect two directors to the first board. 1998, c. 19, s. 42 (8).

Quorum

(9) Despite subsection 50 (1), at the meeting mentioned in subsection (6), the quorum for the election of directors under subsection (8) is those owners who own 25 per cent of the units in the corporation not owned by the declarant. 1998, c. 19, s. 42 (9).

Determination of quorum

(10) To count towards the quorum, an owner must have been entitled to receive notice of the meeting, must be entitled to vote at a meeting and shall be present at the meeting or represented by proxy. 1998, c. 19, s. 42 (10).

Increased number

(11) A director elected to the first board under subsection (8) shall hold office in addition to the directors appointed to the first board even if the addition of an elected director results in more directors on the board than the declaration allows. 1998, c. 19, s. 42 (11).

Transition

(12) The owners other than the declarant shall not be entitled to elect a director under subsection (8) if the corporation's first board was appointed or elected on or before the day this section comes into force. 1998, c. 19, s. 42 (12).

Turn-over meeting

43. (1) The board elected or appointed at a time when the declarant owns a majority of the units shall, not more than 21 days after the declarant ceases to be the registered owner of the majority of the units, call a meeting of owners to elect a new board. 1998, c. 19, s. 43 (1).

Who may call meeting

(2) If the board does not call the meeting within the required time, an owner or a mortgagee having the right to vote under section 48 may call the meeting. 1998, c. 19, s. 43 (2).

Time of meeting

(3) The board shall hold the meeting within 21 days after it is called. 1998, c. 19, s. 43 (3).

Things to turn over

(4) At the meeting, the declarant shall deliver to the board elected at the meeting,

- (a) the seal of the corporation;
- (b) the minute book for the corporation including a copy of the registered declaration, registered by-laws, current rules and minutes of owners' meetings and board meetings;
- (c) copies of all agreements entered into by the corporation or the declarant or the declarant's representatives on behalf of the corporation, including management contracts, deeds, leases, licences and easements;
- (d) copies of all policies of insurance and the related certificates or memoranda of insurance and all insurance trust agreements;
- (e) bills of sale or transfers for all items that are assets of the corporation but not part of the property;
- (f) the records maintained under subsection 47 (2) and subsection 83 (3); and
- (g) all records that it has related to the units or to employees of the corporation. 1998, c. 19, s. 43 (4).

Same, after meeting

- (5) The declarant shall deliver to the board within 30 days after the meeting,
 - (a) the existing warranties and guarantees for all the equipment, fixtures and chattels included in the sale of either the units or common elements that are not protected by warranties and guarantees given directly to a unit purchaser;
 - (b) the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
 - (c) the as-built specifications, indicating all substantive changes, if any, from the original specifications;
 - (d) all existing plans for underground site services, site grading, drainage and landscaping, and television, radio or other communications services;
 - (e) all other existing plans and information not mentioned in clause (b), (c) or (d) that are relevant to the repair or maintenance of the property;
 - (f) if the property of the corporation is subject to the *Ontario New Home Warranties Plan Act*,

- (i) proof, in the form, if any, prescribed by the Minister, that the units and common elements have been enrolled in the Plan within the meaning of that Act in accordance with the regulations made under that Act, and
- (ii) a copy of all final reports on inspections that the Corporation within the meaning of that Act requires be carried out on the common elements;
- (g) a table setting out the responsibilities for repair after damage and maintenance and indicating whether the corporation or the owners are responsible;
- (h) a schedule setting out what constitutes a standard unit for each class of unit that the declarant specifies for the purpose of determining the responsibility for repairing improvements after damage and insuring them;
- (i) all financial records of the corporation and of the declarant relating to the operation of the corporation from the date of registration of the declaration and the description;
- (j) if the meeting is held after nine months following the registration of the declaration and description, the reserve fund study that is required within the year following the registration of the declaration and description;
- (k) all reserve fund studies that have been completed or are required to have been completed at the time the meeting is held, other than the reserve fund study that is required within the year following the registration of the declaration and description;
- (l) a copy of the most current disclosure statement delivered to a purchaser of a unit in the corporation under section 72 before the meeting; and
- (m) all other material that the regulations made under this Act require to be given to the board. 1998, c. 19, s. 43 (5).

Cost

(6) The items mentioned in subsections (4) and (5) shall be prepared at the declarant's expense, except for the items mentioned in clauses (5) (j) and (k) which shall be prepared at the expense of the corporation. 1998, c. 19, s. 43 (6).

Audited financial statements

(7) The declarant shall deliver to the board within 60 days after the meeting audited financial statements of the corporation prepared by the auditor, on behalf of the owners and at the expense of the corporation, as of the last day of the month in which the meeting is held. 1998, c. 19, s. 43 (7).

Application

(8) The corporation may make an application to the Superior Court of Justice for an order under subsection (9). 1998, c. 19, s. 43 (8); 2000, c. 26, Sched. B, s. 7 (5).

Court order

- (9) The court, if satisfied that the declarant has, without reasonable excuse, failed to comply with subsection (4), (5) or (7),
 - (a) shall order that the declarant pay damages to the corporation for the loss it incurred as a result of the declarant's acts of non-compliance with subsection (4), (5) or (7), as the case may be;
 - (b) shall order that the declarant pay the corporation's costs of the application;
 - (c) may order the declarant to pay to the corporation an additional amount not to exceed \$10,000; and
 - (d) may order the declarant to comply with subsection (4), (5) or (7), as the case may be. 1998, c. 19, s. 43 (9).

Performance audit

44. (1) If the property of the corporation includes one or more units for residential purposes or if the corporation is a common elements condominium corporation, the board shall retain a person who holds a certificate of authorization within the meaning of the *Professional Engineers Act* or a certificate of practice within the meaning of the *Architects Act* to conduct a performance audit of the common elements described in the description on behalf of the corporation. 1998, c. 19, s. 44 (1).

Time for audit

(2) A performance audit shall be conducted no earlier than six months, and no later than 10 months, following the registration of the declaration and description. 1998, c. 19, s. 44 (2).

Cost

(3) The corporation shall pay the cost of the performance audit and it shall form part of the corporation's budget for the year following the registration of the declaration and description. 1998, c. 19, s. 44 (3).

Purpose

(4) The person who conducts the performance audit shall determine whether there are any deficiencies in the performance of the common elements described in the description after construction has been completed on them that,

- (a) may give rise to a claim for payment out of the guarantee fund under section 14 of the *Ontario New Home Warranties Plan Act* to the corporation; or
- (b) subject to the regulations made under this Act, would give rise to a claim described in clause (a) if the property of the corporation were subject to that Act. 1998, c. 19, s. 44 (4).

Duties

- (5) In making the determination, the person who conducts the performance audit shall,
 - (a) inspect the major components of the buildings on the property which, subject to the regulations made under this Act, include the foundation, parking garage, wall construction, air and vapour barriers, windows, doors, elevators, roofing, mechanical system, electrical system, fire protection system and all other components that are prescribed;
 - (b) subject to the regulations made under this Act, inspect the landscaped areas of the property;
 - (c) review all final reports on inspections that the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* requires be carried out on the common elements; and
 - (d) conduct a survey of the owners of the corporation as to what evidence, if any, they have seen of,
 - (i) damage to the units that may have been caused by defects in the common elements, and
 - (ii) defects in the common elements that may cause damage to the units. 1998, c. 19, s. 44 (5).

Powers for audit

- (6) The person who conducts a performance audit may, for the purpose of the audit,
 - (a) enter onto the property at any reasonable time either alone or accompanied with any expert that the person considers necessary for the audit;
 - (b) require any person to produce any drawings, specifications or information that may on reasonable grounds be relevant to the audit;
 - (c) make all examinations, tests or inquiries that may on reasonable grounds be relevant to the audit; and
 - (d) call upon any expert for the assistance that the person considers necessary in conducting the audit. 1998, c. 19, s. 44 (6).

No obstruction

(7) No person shall obstruct a person who is exercising powers under this section or provide false information or refuse to provide information to the person. 1998, c. 19, s. 44 (7).

Contents

- (8) The person who conducts a performance audit shall prepare a written report that includes,
 - (a) a copy of the person's certificate of authorization within the meaning of the *Professional Engineers Act* or certificate of practice within the meaning of the *Architects Act*, as the case may be;
 - (b) details of the inspection and findings made by the person in the course of conducting the audit;
 - (c) a statement that the person has reviewed all final reports described in clause (5) (c);
 - (d) a copy of the survey described in clause (5) (d) and a summary of the results of it;
 - (e) the determination that subsection (4) requires the person to make; and
 - (f) all other material that the regulations made under this Act require. 1998, c. 19, s. 44 (8).

Submission of report

(9) Before the end of the 11th month following the registration of the declaration and description, the person who conducts a performance audit shall,

- (a) submit the report to the board; and

- (b) file the report with the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* if the property is subject to that Act. 1998, c. 19, s. 44 (9).

Claim under other Act

(10) The filing of the report with the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* shall be deemed to constitute a notice of claim that the corporation gives to the Corporation within the meaning of that Act under the regulations made under that Act for the deficiencies disclosed in the report. 1998, c. 19, s. 44 (10).

OWNERS

Meetings

45. (1) Subject to the other requirements of this Act, anything that this Act requires to be approved by a vote of any of the owners shall be approved only at a meeting of owners duly called for that purpose. 1998, c. 19, s. 45 (1).

Annual general meeting

(2) The board shall hold a general meeting of owners not more than three months after the registration of the declaration and description and subsequently within six months of the end of each fiscal year of the corporation. 1998, c. 19, s. 45 (2).

Matters for annual general meeting

(3) At an annual general meeting, an owner may raise for discussion any matter relevant to the affairs and business of the corporation. 1998, c. 19, s. 45 (3).

Other meetings

(4) The board may at any time call a meeting of owners for the transaction of any business, and the notice of the meeting shall specify the nature of the business. 1998, c. 19, s. 45 (4).

Requisition for meeting

46. (1) A requisition for a meeting of owners may be made by those owners who at the time the board receives the requisition, own at least 15 per cent of the units, are listed in the record maintained by the corporation under subsection 47 (2) and are entitled to vote. 1998, c. 19, s. 46 (1).

Form of requisition

(2) The requisition shall,

- (a) be in writing and be signed by the requisitionists;
- (b) state the nature of the business to be presented at the meeting; and
- (c) be delivered personally or by registered mail to the president or secretary of the board or deposited at the address for service of the corporation. 1998, c. 19, s. 46 (2).

Same, removal of directors

(3) If the nature of the business to be presented at the meeting includes the removal of one or more of the directors, the requisition shall state, for each director who is proposed to be removed, the name of the director, the reasons for the removal and whether the director occupies a position on the board that under subsection 51 (6) is reserved for voting by owners of owner-occupied units. 1998, c. 19, s. 46 (3).

Duty of board

- (4) Upon receiving a requisition mentioned in subsection (1), the board shall,
- (a) if the requisitionists so request in the requisition or consent in writing, add the business to be presented at the meeting to the agenda of items for the next annual general meeting; or
 - (b) otherwise call and hold a meeting of owners within 35 days. 1998, c. 19, s. 46 (4).

Non-compliance

(5) If the board does not comply with subsection (4), a requisitionist may call a meeting of owners which shall be held within 45 days of the day on which the meeting is called. 1998, c. 19, s. 46 (5).

Reimbursement of cost

(6) Upon request, the corporation shall reimburse a requisitionist who calls a meeting under subsection (5) for the reasonable costs incurred in calling the meeting. 1998, c. 19, s. 46 (6).

Notice to owners

47. (1) A notice that is required to be given to owners shall,
- (a) be in writing;
 - (b) be given at least 15 days before the day of the meeting if the notice is a notice of meeting of owners; and
 - (c) be given to,
 - (i) each owner who has notified the corporation in writing of the owner's name and address for service, and
 - (ii) each mortgagee of a unit who,
 - (A) under the terms of the mortgage, has the right to vote at a meeting of owners in the place of the unit owner or to consent in writing in the place of the unit owner, and
 - (B) has notified the corporation in writing of the right and the mortgagee's name and address for service. 1998, c. 19, s. 47 (1).

Record of owners and mortgagees

(2) A corporation shall maintain a record of the names and addresses for service that it receives under subsection (1). 1998, c. 19, s. 47 (2).

Use of record

(3) A corporation shall use the record for the purposes of this Act, and no other purpose. 1998, c. 19, s. 47 (3).

Change in address

(4) A person whose name is in the record shall notify the corporation in writing of all changes in the address for service. 1998, c. 19, s. 47 (4).

Record date

(5) In the case of a notice of meeting of owners, the persons whose names appeared in the record 20 days before the day of the meeting shall be deemed to be the persons to whom the notice is required to be given under subsection (1). 1998, c. 19, s. 47 (5).

Same, other notice

(6) In the case of a notice to owners that is not a notice of meeting of owners, the persons whose names appeared in the record 5 days before the day the notice is given shall be deemed to be the persons to whom the notice is required to be given under subsection (1). 1998, c. 19, s. 47 (6).

Service on owner

- (7) A notice that is required to be given to an owner shall be,
- (a) delivered to the owner personally;
 - (b) sent by prepaid mail addressed to the owner at the address for service that appears in the record;
 - (c) sent by facsimile transmission, electronic mail or any other method of electronic communication if the owner agrees in writing that the party giving the notice may give the notice in this manner; or
 - (d) delivered at the owner's unit or at the mail box for the unit unless,
 - (i) the party giving the notice has received a written request from the owner that the notice not be given in this manner, or
 - (ii) the address for service that appears in the record is not the address of the unit of the owner. 1998, c. 19, s. 47 (7).

Service on mortgagee

- (8) A notice that is required to be given to a mortgagee shall be,
- (a) delivered to the mortgagee personally;
 - (b) sent by prepaid mail addressed to the mortgagee at the address for service that appears in the record; or
 - (c) sent by facsimile transmission, electronic mail or any other method of electronic communication if the mortgagee agrees in writing that the party giving the notice may give the notice in this manner. 1998, c. 19, s. 47 (8).

Content of notice of meeting

- (9) A notice of meeting of owners shall,
- (a) specify the place, the date and the hour of the meeting, as well as the nature of the business to be presented at the meeting; and
 - (b) be accompanied by,
 - (i) a copy of all proposed changes to the declaration, by-laws, rules or agreements that are to be discussed at the meeting, and
 - (ii) a copy of the requisition, if an owner has made a requisition under section 46. 1998, c. 19, s. 47 (9).

Matters at meeting

(10) No vote shall be taken at a meeting of owners on any matter other than routine procedure unless that matter was clearly disclosed in the notice of the meeting. 1998, c. 19, s. 47 (10).

Waiver of notice

(11) An owner or mortgagee who attends a meeting or who is represented by proxy at a meeting shall be deemed to have waived the right to object to a failure to give the required notice, unless the person expressly objects to the failure at the meeting. 1998, c. 19, s. 47 (11).

Mortgagee's right to vote

48. (1) A mortgagee of a unit who is entitled to receive notice of a meeting of owners has the right to vote at the meeting in the place of the unit owner or to exercise the right, if any, of the unit owner to consent in writing if the mortgagee gives notice to the corporation and to the owner at least four days before the date of the meeting of the mortgagee's intention to exercise the right. 1998, c. 19, s. 48 (1).

More than one mortgagee

(2) If a unit is subject to more than one mortgage for which the mortgagee has the right to vote at a meeting of owners in the place of the owner or to consent in writing in the place of the owner, the mortgagee who has priority may exercise the right and in that case no other mortgagee may exercise the right. 1998, c. 19, s. 48 (2).

Same

(3) If a mortgagee who has priority fails to exercise the right, the mortgagee who is next in priority may exercise the right and in that case no other mortgagee may exercise the right. 1998, c. 19, s. 48 (3).

Voting by owner

(4) If none of the mortgagees who have the right exercises the right, the owner has the right to vote at a meeting of owners subject to subsection 51 (1) or to consent in writing. 1998, c. 19, s. 48 (4).

Loss of owner's right to vote

49. (1) An owner is not entitled to vote at a meeting if any contributions payable in respect of the owner's unit have been in arrears for 30 days or more at the time of the meeting. 1998, c. 19, s. 49 (1).

Payment of arrears

(2) An owner who is not entitled to vote under subsection (1) may vote if the corporation receives payment of the arrears with respect to the owner's unit before the meeting is held. 1998, c. 19, s. 49 (2).

Parking or storage unit

(3) No owner shall vote in respect of a unit that is intended for parking or storage purposes or for the purpose of housing services or facilities or mechanical installations unless all the units in the corporation are used for one or more of those purposes. 1998, c. 19, s. 49 (3).

Quorum

50. (1) A quorum for the transaction of business at a meeting of owners is those owners who own 25 per cent of the units of the corporation, unless a by-law registered in accordance with subsection 56 (9) after this subsection comes into force provides that the quorum is those owners who own 33 $\frac{1}{3}$ per cent of the units of the corporation. 1998, c. 19, s. 50 (1).

Determination of quorum

(2) To count towards the quorum, an owner must have been entitled to receive notice of the meeting, must be entitled to vote at a meeting and shall be present at the meeting or represented by proxy. 1998, c. 19, s. 50 (2).

Where only one owner

(3) If a corporation has only one owner, the owner present in person or by proxy constitutes a meeting. 1998, c. 19, s. 50 (3).

Voting

51. (1) To vote at a meeting of owners, an owner must have been entitled to receive notice of the meeting and must be entitled to vote at the meeting. 1998, c. 19, s. 51 (1).

One vote per unit

(2) All voting by owners shall be on the basis of one vote per unit. 1998, c. 19, s. 51 (2).

Joint owners

(3) The majority of the owners of a unit may exercise the right to vote in respect of the unit but the vote shall not be counted if there are two or more owners of the unit and they are evenly divided on how to exercise the vote. 1998, c. 19, s. 51 (3).

Voting for directors

(4) Subject to this section, on a vote to elect or to remove a member of the board all owners entitled to vote may vote for each member of the board. 1998, c. 19, s. 51 (4).

Definition

(5) In subsections (6), (7) and (8),

“owner-occupied unit” means a unit of an owner who is entitled to vote in respect of the unit at a meeting to elect or to remove a director where the unit is used for residential purposes and the owner has not leased the unit within the 60 days before notice is given for the meeting, as shown by the record that the corporation is required to maintain under subsection 83 (3). 1998, c. 19, s. 51 (5).

Reserved position

(6) If at least 15 per cent of the units of the corporation are owner-occupied units on or after the time at which the board is required to call a turn-over meeting under section 43, no persons other than the owners of owner-occupied units may elect a person to or remove a person from one of the positions on the board. 1998, c. 19, s. 51 (6).

Other positions

(7) Nothing in subsection (6) affects the right of the owner of an owner-occupied unit to vote to elect or to remove any members of the board other than the member who occupies the position mentioned in that subsection. 1998, c. 19, s. 51 (7).

Removal

(8) A director elected under subsection (6) may be removed before the expiration of the director’s term of office by a vote of the owners at a meeting duly called for the purpose where the owners of more than 50 per cent of all of the owner-occupied units in the corporation vote in favour of removal. 1998, c. 19, s. 51 (8).

Method of voting

52. (1) On a show of hands or on a recorded vote, votes may be cast either personally or by proxy. 1998, c. 19, s. 52 (1).

Request for recorded vote

(2) At a meeting of owners, a person entitled to vote at the meeting may request that a recorded vote be held on any item scheduled for a vote either before or promptly after the vote. 1998, c. 19, s. 52 (2).

Proxy

(3) A proxy need not be an owner. 1998, c. 19, s. 52 (3).

Appointment of proxy

(4) Subject to the regulations made under this Act and subsection (5), an instrument appointing a proxy shall be in writing under the hand of the appointer or the appointer’s attorney and shall be for a particular meeting of owners. 1998, c. 19, s. 52 (4).

Proxy for voting for directors

(5) An instrument appointing a proxy for the election or removal of a director at a meeting of owners shall state the name of the directors for and against whom the proxy is to vote. 1998, c. 19, s. 52 (5).

Prescribed form

(6) An instrument appointing a proxy may be in the prescribed form. 1998, c. 19, s. 52 (6).

Record of corporation

(7) The corporation shall retain all instruments appointing a proxy for a meeting of owners as a record of the corporation for 90 days following the date of the meeting. 1998, c. 19, s. 52 (7).

Majority voting

53. Unless otherwise provided in this Act, all questions proposed for the consideration of the owners at a meeting of owners shall be determined by a majority of the votes cast by owners present at the meeting in person or by proxy if there is a quorum at the meeting. 1998, c. 19, s. 53.

Service on owner or mortgagee

54. Unless this Act indicates otherwise, anything required to be given to an owner or a mortgagee under this Act is sufficiently served if it is given in accordance with subsection 47 (7) or (8), as the case may be. 1998, c. 19, s. 54.

Records

55. (1) The corporation shall keep adequate records, including the following records:

1. The financial records of the corporation.
2. A minute book containing the minutes of owners' meetings and the minutes of board meetings.
3. A copy of the declaration, by-laws and rules.
4. All lists, items, records and other documents mentioned in subsections 43 (4) and (5).
5. The report described in subsection 44 (8) that the corporation receives from the person who conducts a performance audit.
6. The records required under subsection 47 (2) and 83 (3).
7. A record of all reserve fund studies and all plans to increase the reserve fund under subsection 94 (8).
8. A copy of all agreements entered into by or on behalf of the corporation.
9. The report that the corporation receives from an inspector in accordance with subsection 130 (5).
10. All other records as may be prescribed or specified in the by-laws of the corporation. 1998, c. 19, s. 55 (1).

Financial records

(2) The corporation shall keep all financial records for at least six years from the end of the last fiscal period to which they relate, in addition to satisfying the requirements of any taxing authority of Ontario, the government of Canada or any other jurisdiction to which the corporation is subject. 1998, c. 19, s. 55 (2).

Examination of records

(3) Upon receiving a written request and reasonable notice, the corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine the records of the corporation, except those records described in subsection (4), at a reasonable time for all purposes reasonably related to the purposes of this Act. 1998, c. 19, s. 55 (3).

Exception

- (4) The right to examine records under subsection (3) does not apply to,
- (a) records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation;
 - (b) records relating to actual or pending litigation or insurance investigations involving the corporation; or
 - (c) subject to subsection (5), records relating to specific units or owners. 1998, c. 19, s. 55 (4).

Same

- (5) Clause (4) (c) does not prevent,
- (a) an owner, a purchaser or a mortgagee of a unit or an agent of one of them from examining records under subsection (3) that relate to the unit of the owner, the unit being purchased or the unit that is subject to the mortgage, as the case may be; or

- (b) an owner of a unit or an agent of the owner from examining records under subsection (3) that relate to the owner. 1998, c. 19, s. 55 (5).

Copies of records

- (6) The corporation shall, within a reasonable time, provide copies of the records to a person examining them, if the person so requests and pays a reasonable fee to compensate the corporation for the labour and copying charges. 1998, c. 19, s. 55 (6).

Admissible evidence

- (7) A copy that a corporation has certified under its seal to be a true copy of a record is admissible in evidence and, in the absence of evidence to the contrary, is proof of the facts stated in it. 1998, c. 19, s. 55 (7).

Penalty for non-compliance

- (8) A corporation that without reasonable excuse does not permit an owner or an agent of an owner to examine records or to copy them under this section shall pay the sum of \$500 to the owner on receiving a written request for payment from the owner. 1998, c. 19, s. 55 (8).

Recovery of sum

- (9) The owner may recover the sum from the corporation by an action in the Small Claims Court. 1998, c. 19, s. 55 (9).

Order for production of records

- (10) If a corporation without reasonable excuse does not permit an owner or an agent of an owner to examine records or to copy them under this section, the Small Claims Court may order the corporation to produce the records for examination. 1998, c. 19, s. 55 (10).

BY-LAWS AND RULES

By-laws

56. (1) The board may, by resolution, make, amend or repeal by-laws, not contrary to this Act or to the declaration,
- (a) to govern the number, qualification, nomination, election, resignation, removal, term of office and remuneration of the directors, subject to subsection (2);
 - (b) to regulate board meetings, the form of board meetings and the quorum and functions of the board;
 - (c) to provide that the quorum for the transaction of business at a meeting of owners is those owners who own $33\frac{1}{3}$ per cent of the units of the corporation, subject to subsection 50 (2);
 - (d) to govern the appointment, remuneration, functions, duties, resignation and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
 - (e) subject to subsection (3), to authorize the borrowing of money to carry out the objects and duties of the corporation;
 - (f) to authorize the corporation to object to assessments under the *Assessment Act* on behalf of owners if it gives notice of the objections to the owners, and to authorize the defraying of costs of objections out of the common expenses;
 - (g) to govern the assessment and collection of contributions to the common expenses;
 - (h) to establish what constitutes a standard unit for each class of unit specified in the by-law for the purpose of determining the responsibility for repairing improvements after damage and insuring them;
 - (i) to extend the circumstances described in subsection 105 (2) under which an amount shall be added to the common expenses payable for an owner's unit for the purposes of subsection 105 (3);
 - (j) to govern the maintenance of the units and common elements;
 - (k) to restrict the use and enjoyment that persons other than occupants of the units may make of the common elements and assets of the corporation, subject to any agreement made by the corporation with respect to the use and enjoyment of its common elements and assets that it shares with another person;
 - (l) to govern the management of the property;
 - (m) to govern the use and management of the assets of the corporation;
 - (n) to specify duties of the corporation in addition to the duties set out in this Act and the declaration;

- (o) to establish the procedure with respect to the mediation of disputes or disagreements between the corporation and the owners for the purpose of section 125 or 132; or
- (p) to govern the conduct generally of the affairs of the corporation. 1998, c. 19, s. 56 (1).

Remuneration of directors

(2) A by-law relating to the remuneration of directors shall fix the remuneration and the period not exceeding three years for which it is to be paid. 1998, c. 19, s. 56 (2).

Borrowing by-law

(3) A corporation shall not borrow money for expenditures not listed in the budget for the current fiscal year unless it has passed a by-law under clause (1) (e) specifically to authorize the borrowing. 1998, c. 19, s. 56 (3).

Assessment appeal

(4) If the board has made a by-law under clause (1) (f), the corporation shall have the capacity and authority to appeal under section 40 of the *Assessment Act* on behalf of owners but shall not be liable for an alteration in the assessment of a unit or for any other matter relating to the appeal, except for the costs of the appeal. 2008, c. 7, Sched. A, s. 18.

Same

(5) Despite a by-law made under clause (1) (f), on written notice to the board and to the Assessment Review Board given before the hearing of an appeal under section 40 of the *Assessment Act*, an owner may withdraw an appeal that the corporation has made on the owner's behalf. 2008, c. 7, Sched. A, s. 18.

By-laws to be reasonable

(6) The by-laws shall be reasonable and consistent with this Act and the declaration. 1998, c. 19, s. 56 (6).

Same, proposed by-laws

(7) By-laws proposed by the declarant before the registration of a declaration and description shall be reasonable and consistent with this Act and the proposed declaration. 1998, c. 19, s. 56 (7).

Inconsistent provisions

(8) If any provision in a by-law or a proposed by-law is inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the by-law or proposed by-law, as the case may be, shall be deemed to be amended accordingly. 1998, c. 19, s. 56 (8).

Registration

(9) For each by-law of a corporation, an officer of the corporation shall certify a copy of the by-law as a true copy and the corporation shall register the copy in,

- (a) the land titles division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office has a land titles division; or
- (b) the registry division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office does not have a land titles division. 1998, c. 19, s. 56 (9).

When by-law effective

- (10) A by-law is not effective until,
 - (a) the owners of a majority of the units of the corporation vote in favour of confirming it, with or without amendment; and
 - (b) a copy of it is registered in accordance with subsection (9). 1998, c. 19, s. 56 (10).

Same, proposed by-law

(11) Despite subsection (10), a by-law proposed by the declarant before the registration of the declaration and description shall be effective until it is replaced or confirmed by a by-law of the corporation that takes effect in accordance with subsection (10). 1998, c. 19, s. 56 (11).

Occupancy standards by-law

57. (1) Subject to section 56, the board may, by resolution, make, amend or repeal by-laws not contrary to this Act or the declaration that establish standards for the occupancy of units of the corporation for residential purposes. 1998, c. 19, s. 57 (1).

Standards

- (2) The standards shall be,
- (a) the occupancy standards contained in a by-law passed by the council of a municipality in which the land of the corporation is situated; or
 - (b) subject to the regulations made under this Act, standards that are not more restrictive than standards that are in accordance with the maximum occupancy for each unit based on the maximum occupancy for which the building in which the units are located is designed. 1998, c. 19, s. 57 (2).

Prohibition

(3) A by-law passed under subsection (1) may prohibit persons from occupying units of the corporation that do not comply with the standards set out in the by-law. 1998, c. 19, s. 57 (3).

Assessments

- (4) If the board has passed a by-law under subsection (1) and a person contravenes the standards for the occupancy of a unit set out in the by-law, the board may, by resolution, levy against the unit,
- (a) an assessment for the amount that reasonably reflects the amount by which the contravention increases the cost of maintaining the common elements and repairing them after damage; and
 - (b) an assessment for the amount that reasonably reflects the amount by which the contravention increases the cost of using the utilities that form part of the common expenses. 1998, c. 19, s. 57 (4).

Part of common expenses

(5) The assessments mentioned in subsection (4) shall form part of the contribution to the common expenses payable for the unit. 1998, c. 19, s. 57 (5).

Rules

58. (1) The board may make, amend or repeal rules respecting the use of common elements and units to,
- (a) promote the safety, security or welfare of the owners and of the property and assets of the corporation; or
 - (b) prevent unreasonable interference with the use and enjoyment of the common elements, the units or the assets of the corporation. 1998, c. 19, s. 58 (1).

Rules to be reasonable

(2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws. 1998, c. 19, s. 58 (2).

Same, proposed rules

(3) Rules proposed by the declarant before the registration of a declaration and description shall be reasonable and consistent with this Act, the proposed declaration and the proposed by-laws. 1998, c. 19, s. 58 (3).

Inconsistent provisions

(4) If any provision in a rule or a proposed rule is inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the rule or proposed rule, as the case may be, shall be deemed to be amended accordingly. 1998, c. 19, s. 58 (4).

Amendment by owners

(5) The owners may amend or repeal a rule at a meeting of owners duly called for that purpose. 1998, c. 19, s. 58 (5).

Notice of rule

- (6) Upon making, amending or repealing a rule, the board shall give a notice of it to the owners that includes,
- (a) a copy of the rule as made, amended or repealed, as the case may be;
 - (b) a statement of the date that the board proposes that the rule will become effective; and
 - (c) a statement that the owners have the right to requisition a meeting under section 46 and the rule becomes effective at the time determined by subsections (7) and (8). 1998, c. 19, s. 58 (6).

When rule effective

(7) Subject to subsection (8), a rule is not effective until,

- (a) the owners approve it at a meeting of owners, if the board receives a requisition for the meeting under section 46 within 30 days after the board has given notice of the rule to the owners; or
- (b) 30 days after the board has given notice of the rule to the owners, if the board does not receive a requisition for the meeting under section 46 within those 30 days. 1998, c. 19, s. 58 (7).

Same

(8) A rule or an amendment to a rule that has substantially the same purpose or effect as a rule that the owners have previously amended or repealed within the preceding two years is not effective until the owners approve it, with or without amendment, at a meeting duly called for that purpose. 1998, c. 19, s. 58 (8).

Same, proposed rule

(9) Despite subsection (7), a rule proposed by the declarant before the registration of the declaration and description shall be effective until it is replaced or confirmed by a rule of the corporation that takes effect in accordance with subsection (7). 1998, c. 19, s. 58 (9).

Compliance

(10) All persons bound by the rules shall comply with them and the rules may be enforced in the same manner as the by-laws. 1998, c. 19, s. 58 (10).

Joint by-laws and rules

59. (1) The boards of two or more corporations may make, amend or repeal joint by-laws or rules governing the use and maintenance of shared facilities and services. 1998, c. 19, s. 59 (1).

Application to corporations

(2) A joint by-law or rule is a by-law or rule, as the case may be, of each corporation. 1998, c. 19, s. 59 (2).

When joint by-law effective

(3) A joint by-law is not effective until,

- (a) the majority of the owners of the units of each corporation vote in favour of confirming it, with or without amendment; and
- (b) each corporation registers a copy of it in accordance with subsection 56 (9). 1998, c. 19, s. 59 (3).

Joint meeting

(4) The vote of the owners under clause (3) (a) may be at a joint meeting of the corporations duly called for that purpose. 1998, c. 19, s. 59 (4).

Repeal of joint by-law

(5) Once a joint by-law is effective, it is effective until the owners of a majority of the units of each corporation vote in favour of repealing it and a copy of the repealing by-law is registered in accordance with subsection 56 (9). 1998, c. 19, s. 59 (5).

Amendment of joint rule

(6) The owners of each corporation may amend or repeal a joint rule at a joint meeting of owners of the corporations or at a meeting of owners of each corporation if the meeting has been duly called for that purpose. 1998, c. 19, s. 59 (6).

Notice of joint rule

(7) Upon making, amending or repealing a joint rule, the board of each corporation shall give a notice of the joint rule to its owners that includes,

- (a) a copy of the rule as made, amended or repealed, as the case may be;
- (b) a statement of the date that the boards propose that the rule will become effective; and
- (c) a statement that the owners have the right to requisition a meeting under section 46 and the rule becomes effective at the time determined by subsections (8), (9) and (10). 1998, c. 19, s. 59 (7).

When joint rule effective

(8) Subject to subsection (10), if the board of any of the corporations receives a requisition for a meeting under section 46 within 30 days after it gives notice of the joint rule to its owners, the joint rule is not effective until the owners approve it at a joint meeting of owners of the corporations or at a meeting of owners of each corporation. 1998, c. 19, s. 59 (8).

Same, no requisition

(9) Subject to subsection (10), if the board of none of the corporations receives a requisition for a meeting under section 46 within 30 days after it gives notice of the joint rule to its owners, the joint rule is not effective until 30 days after the board of each corporation has given notice of the joint rule to its owners. 1998, c. 19, s. 59 (9).

Same, previous rule

(10) A joint rule or an amendment to a joint rule that has substantially the same purpose or effect as a joint rule that the owners have previously amended or repealed within the preceding two years is not effective until the owners of each corporation approve it, with or without amendment, at a joint meeting of owners of the corporations or at a meeting of owners of each corporation duly called for that purpose. 1998, c. 19, s. 59 (10).

AUDITORS AND FINANCIAL STATEMENTS

Appointment of auditor

60. (1) At their first meeting, the owners shall appoint one or more persons qualified to be auditors to hold office as auditors until the close of the next annual general meeting and, if the owners do not do so, the board shall make the necessary appointments as expeditiously as possible. 1998, c. 19, s. 60 (1).

Same, subsequent years

(2) At each annual general meeting, the owners shall appoint one or more persons qualified to be auditors to hold office as auditors until the close of the next annual general meeting and, if the owners do not do so, the auditor in office continues in office until a successor is appointed. 1998, c. 19, s. 60 (2).

Appointment by court

(3) If for any reason no auditor is appointed as required by this section, the Superior Court of Justice may, on the application of an owner,

- (a) appoint one or more persons qualified to be auditors to hold office as auditors until the close of the next annual general meeting;
- (b) fix the remuneration that the corporation shall pay for the services of the auditor who is appointed; and
- (c) fix the amount that the corporation shall pay to the owner for the cost of the application. 1998, c. 19, s. 60 (3); 2000, c. 26, Sched. B, s. 7 (5).

Notice of appointment

(4) The corporation shall give notice in writing to an auditor of the appointment immediately after the appointment is made. 1998, c. 19, s. 60 (4).

Exception

- (5) The owners of a corporation shall not appoint auditors under subsection (2) at an annual general meeting if,
- (a) a turn-over meeting has been held under section 43;
 - (b) the corporation consists of fewer than 25 units; and
 - (c) as of the date of the meeting, all the owners consent in writing to dispense with the audit mentioned in subsection 67 (1) until the next annual general meeting. 1998, c. 19, s. 60 (5).

Qualifications

61. No person shall act as auditor of a corporation if the person,

- (a) is a director, officer or employee of the corporation;
- (b) is a manager under an agreement for the management of the property of the corporation;
- (c) has an interest in a contract to which the corporation is a party; or
- (d) is a partner, employer or employee of a person mentioned in clause (a) or (b). 1998, c. 19, s. 61.

Remuneration

62. The remuneration of an auditor shall be fixed,

- (a) by the owners if the auditor is appointed by the owners; or

(b) by the board if authorized by the owners to do so or if the auditor is appointed by the board. 1998, c. 19, s. 62.

Removal

63. (1) The owners may remove an auditor before the expiration of the auditor's term of office at a meeting duly called for that purpose. 1998, c. 19, s. 63 (1).

Replacement

(2) If the owners remove an auditor under subsection (1), they shall, at the same meeting, appoint a person qualified to be an auditor to act as auditor for the remainder of the term of the auditor who was removed. 1998, c. 19, s. 63 (2).

Approval

(3) The removal of an auditor and the appointment of an auditor under subsection (2) requires the approval of the majority of votes cast by the owners who are present at the meeting in person or by proxy. 1998, c. 19, s. 63 (3).

Notice to auditors

(4) At least 30 days before giving the owners notice of a meeting for the purpose of removing an auditor, the person calling the meeting shall give to the auditor,

- (a) written notice of the intention to call the meeting, specifying the date on which the notice of the meeting is proposed to be mailed;
- (b) a statement of the name of the auditor who is proposed to be removed and the reasons for the removal; and
- (c) a copy of all material proposed to be sent to the owners in connection with the meeting. 1998, c. 19, s. 63 (4).

Right to make representations

(5) An auditor may make written representations to the corporation concerning the proposed removal of the auditor or the appointment of another person to fill the office of auditor. 1998, c. 19, s. 63 (5).

Method

(6) In order to make representations under subsection (5), an auditor shall send them to the person calling the meeting at least three days before the mailing of the notice of the meeting. 1998, c. 19, s. 63 (6).

Notice of meeting

- (7) The person calling the meeting shall, at the expense of the corporation, include in the notice of the meeting,
- (a) a statement of the name of the auditor who is proposed to be removed and the reasons for the removal; and
 - (b) a copy of all representations received. 1998, c. 19, s. 63 (7).

Resignation

64. (1) A resignation of an auditor becomes effective at the time a written resignation is delivered to the corporation or at the time specified in the resignation, whichever is later. 1998, c. 19, s. 64 (1).

Representations

(2) In a resignation, the auditor may make written representations to the corporation concerning the resignation and in that case the corporation shall attach a copy of the representations to the notice of the next meeting of owners. 1998, c. 19, s. 64 (2).

Vacancy

65. (1) If a vacancy arises in the office of auditor, the directors may appoint any person qualified to be an auditor to hold office as auditor to fill the vacancy. 1998, c. 19, s. 65 (1).

Term of replacement

(2) An auditor appointed under subsection (1) shall hold office until the close of the next annual general meeting or until a successor is appointed, whichever is later. 1998, c. 19, s. 65 (2).

Financial statements

66. (1) A corporation shall have its financial statements prepared in the prescribed manner and in accordance with generally accepted accounting principles as are prescribed. 1998, c. 19, s. 66 (1).

Contents

- (2) The financial statements shall include,

- (a) a balance sheet;
- (b) a statement of general operations;
- (c) a statement of changes in financial position;
- (d) a statement of reserve fund operations;
- (e) prescribed information relating to the reserve fund study and the operation of the reserve fund;
- (f) an indication of the aggregate remuneration paid to the directors in that capacity and the aggregate remuneration paid to the officers in that capacity; and
- (g) the additional statements or information that the regulations made under this Act require. 1998, c. 19, s. 66 (2).

Approval

(3) The board shall approve the financial statements before placing them before an annual general meeting. 1998, c. 19, s. 66 (3).

Form of approval

(4) The approval shall be evidenced by the signature at the bottom of the balance sheet by two of the directors duly authorized to sign. 1998, c. 19, s. 66 (4).

Audit

67. (1) The auditor shall, every year, make the examination that is necessary in order to make an annual report on the financial statements to the corporation on behalf of the owners. 1998, c. 19, s. 67 (1).

Right of access

(2) The auditor has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation or from persons under contract to the corporation to manage the property or its assets the information and explanations that, in the auditor's opinion, are necessary in order to make the report. 1998, c. 19, s. 67 (2).

Standards

(3) The auditor's report shall be prepared in the prescribed manner and in accordance with generally accepted auditing standards as are prescribed. 1998, c. 19, s. 67 (3).

Contents of report

(4) The auditor shall include in the report the statements that the auditor considers necessary if the corporation's financial statements are not in accordance with the requirements of this Act and the regulations made under it. 1998, c. 19, s. 67 (4).

Same, reserve fund study

(5) The auditor shall state in the report whether the statement of reserve fund operations and any other prescribed information relating to the operation of the reserve fund and contained in the financial statements do not fairly present the information contained in the reserve fund studies that the auditor has received. 1998, c. 19, s. 67 (5).

Presentation of report

(6) The auditor shall present the auditor's report to the audit committee described in subsection 68 (1) or to the board if there is no audit committee. 1998, c. 19, s. 67 (6).

Immunity

(7) Except with respect to the contents of the report, no action or other proceeding for damages shall be instituted against an auditor or a former auditor for any oral or written statement made in good faith in the execution or intended execution of the duty as auditor under this Act. 1998, c. 19, s. 67 (7).

Audit committee

68. (1) If the number of directors of the corporation is more than six, the directors may elect annually from among their number a committee to be known as the audit committee to hold office until the next annual general meeting. 1998, c. 19, s. 68 (1).

Members

(2) The audit committee shall be composed of at least three directors and the majority of committee members shall not consist of officers or employees of the corporation. 1998, c. 19, s. 68 (2).

Review of statements

(3) On receiving the financial statements, the auditor's report and an amended auditor's report, if any, the audit committee shall review them and submit them to the board. 1998, c. 19, s. 68 (3).

Auditor to appear

(4) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the committee when the committee so requires. 1998, c. 19, s. 68 (4).

Meeting at auditor's request

(5) At the request of the auditor, the audit committee shall convene a meeting of the committee to consider all matters the auditor believes should be brought to the attention of the board or the committee members. 1998, c. 19, s. 68 (5).

Delivery of statements

69. (1) The board shall place before each annual general meeting,

(a) the financial statements as approved by the board;

(b) the auditor's report; and

(c) all further information respecting the financial position of the corporation that the by-laws of the corporation require. 1998, c. 19, s. 69 (1).

Copy with notice of meeting

(2) The corporation shall attach to the notice of the annual general meeting a copy of the financial statements and the auditor's report. 1998, c. 19, s. 69 (2).

Right to attend meeting

70. (1) The auditor is entitled to attend a meeting of owners and to be heard on any part of the business of the meeting that concerns the office of the auditor. 1998, c. 19, s. 70 (1).

Notice of meetings

(2) The corporation shall give the auditor notice of all meetings of owners and all other communications relating to the meetings that the owners are entitled to receive. 1998, c. 19, s. 70 (2).

Attendance required

(3) The corporation or an owner may require that an auditor or a former auditor attend a meeting of owners for the purpose of answering inquiries described in subsection (6) by giving written notice to the person whose attendance is required, at least five days before the meeting, that the person's presence is required. 1998, c. 19, s. 70 (3).

Notice to corporation

(4) An owner who gives written notice to an auditor or former auditor under subsection (3) shall give a copy of the notice to the corporation. 1998, c. 19, s. 70 (4).

Remuneration for attendance

(5) If an auditor or a former auditor is required to attend a meeting of owners, the corporation shall compensate the auditor or former auditor, as the case may be, for expenses and pay the reasonable remuneration that it deems appropriate. 1998, c. 19, s. 70 (5).

Duty to answer questions

(6) At a meeting of owners, the auditor or former auditor, as the case may be, if present, shall answer inquiries concerning the basis upon which the person formed the opinion stated in the person's reports. 1998, c. 19, s. 70 (6).

Amendment of statements

71. (1) The board shall amend the corporation's financial statements if facts come to the attention of the directors or officers of a corporation after the annual general meeting and the facts require a material adjustment to the financial statements that were presented at the meeting. 1998, c. 19, s. 71 (1).

Copy of amended statements

(2) Immediately after making an amendment, the corporation shall send to the auditor a statement of the facts that gave rise to the amendment and a copy of the amended financial statements. 1998, c. 19, s. 71 (2).

Amendment of auditor's report

(3) On receiving the statements furnished under subsection (2), the auditor shall amend the auditor's report if the auditor is of the opinion that it is necessary and in that case shall present it to the audit committee or to the board if there is no audit committee. 1998, c. 19, s. 71 (3).

Delivery of amended report

(4) The board shall mail or deliver a copy of the amended report to the owners. 1998, c. 19, s. 71 (4).

Same, by auditor

(5) If the board does not mail or deliver a copy of the amended report to the owners within a reasonable time, the auditor shall mail or deliver a copy of the amended report to the owners and the corporation shall reimburse the auditor for the reasonable costs incurred in the mailing or the delivery. 1998, c. 19, s. 71 (5).

**PART V
SALE AND LEASE OF UNITS**

DISCLOSURE REQUIREMENTS

Disclosure statement

72. (1) The declarant shall deliver to every person who purchases a unit or a proposed unit from the declarant a copy of the current disclosure statement made by the declarant for the corporation of which the unit or proposed unit forms part. 1998, c. 19, s. 72 (1).

Purchaser not bound

(2) An agreement of purchase and sale of a unit or a proposed unit entered into by a declarant is not binding on the purchaser until the declarant has delivered to the purchaser a copy of the current disclosure statement. 1998, c. 19, s. 72 (2).

Contents

(3) A disclosure statement shall specify the date on which it is made and shall contain,

- (a) a table of contents prepared in accordance with subsection (4) and located at the beginning of the disclosure statement;
- (b) a statement indicating,
 - (i) whether the corporation is a freehold condominium corporation or a leasehold condominium corporation, and
 - (ii) if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is;
- (c) a statement of the name and municipal address of the declarant and the mailing address of the property or the proposed property and its municipal address if available;
- (d) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with all conditions that apply to the provision of amenities;
- (e) if the declarant has made an application for approval described in subsection 9 (4), a summary of the reports, if any, that the approval authority has required be made under subsection 9 (4) and the agreements, if any, that the approval authority has imposed under subsection 9 (5) as a condition of approval;
- (f) a statement indicating whether the property or part of the property is or may be subject to the *Ontario New Home Warranties Plan Act* or whether the declarant has enrolled or intends to enrol the proposed units and common elements in the Plan within the meaning of that Act in accordance with the regulations made under that Act;
- (g) a statement whether a building on the property or a unit or a proposed unit has been converted from a previous use;
- (h) a statement whether one or more units or proposed units may be used for commercial or other purposes not ancillary to residential purposes;
- (i) a statement of the portion of units or proposed units which the declarant intends to market in blocks of units to investors;
- (j) a statement of the portion of units or proposed units, to the nearest anticipated 25 per cent, that the declarant intends to lease;
- (k) if construction of amenities is not completed, a schedule of the proposed commencement and completion dates;
- (l) a list of the amenities that the declarant proposes to provide to the purchaser during a period of interim occupancy of a proposed unit under section 80;

- (m) a copy of the existing or proposed declaration, by-laws, rules and insurance trust agreement, if any;
- (n) a brief description of the significant features of all agreements or proposed agreements mentioned in section 111, 112, 113 or 114 and of all agreements or proposed agreements between the corporation and another corporation;
- (o) a statement of whether, to the knowledge of the declarant, the corporation intends to amalgamate with another corporation or whether the declarant intends to cause the corporation to amalgamate with another corporation within 60 days of the date of registration of the declaration and description for the corporation;
- (p) if an amalgamation is intended under clause (o), a copy of the proposed declaration, description, by-laws and rules for the amalgamated corporation, if available;
- (q) a copy of the budget statement described in subsection (6);
- (r) a copy of the budget of the corporation for the current fiscal year if more than one year has passed since the registration of the declaration and description for the corporation;
- (s) a statement setting out the fees or charges, if any, that the corporation is required to pay to the declarant or another person; and
- (t) all other material that the regulations made under this Act require. 1998, c. 19, s. 72 (3); 2001, c. 9, Sched. D, s. 3 (1).

Table of contents

(4) The table of contents in the disclosure statement shall be in the prescribed form, shall indicate whether the declaration, by-laws, rules or the proposed declaration, by-laws or rules of the corporation or any other material in the disclosure statement deal with the following matters and, if so, shall indicate where the matters are dealt with:

1. A statement indicating,
 - i. whether the corporation is a leasehold condominium corporation or a freehold condominium corporation, and
 - ii. if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is.
2. The property or part of the property is or may be subject to the *Ontario New Home Warranties Plan Act* or the proposed units and common elements are enrolled or are intended to be enrolled in the Plan within the meaning of that Act in accordance with the regulations made under that Act.
3. A building on the property or a unit or a proposed unit has been converted from a previous use.
4. One or more units or proposed units may be used for commercial or other purposes not ancillary to residential purposes.
5. A provision exists with respect to pets on the property or the proposed property.
6. There exist restrictions or standards with respect to the occupancy or use of units or proposed units or the use of common elements or proposed common elements that are based on the nature or design of the facilities and services on the property or on other aspects of the buildings located on the property.
7. A statement of the portion of units or proposed units, to the nearest anticipated 25 per cent, that the declarant intends to lease.
8. A statement whether the proportion, expressed in percentages, of the common interest appurtenant to any unit or proposed unit differs in an amount of 10 per cent or more from that appurtenant to any other unit or proposed unit of the same type, size and design.
9. A statement whether the proportion, expressed in percentages, in which the owner of any unit or proposed unit is required to contribute to the common expenses differs in an amount of 10 per cent or more from that required of the owner of any other unit or proposed unit of the same type, size and design.
10. A statement whether any unit or proposed unit is exempt from a cost attributable to the rest of the units or proposed units.
11. Part or the whole of the common elements or the proposed common elements are subject to a lease or licence.
12. A statement whether parking is allowed in or on a unit, on the common elements or on a part of the common elements of which an owner has exclusive use and a statement of the restrictions on parking.
13. Any other statement specified in the regulations made under this Act. 1998, c. 19, s. 72 (4).

Copy of budget

(5) On the request of the declarant, the corporation shall, promptly and without charge, provide a copy of its budget for the current fiscal year to the declarant. 1998, c. 19, s. 72 (5).

Budget statement

(6) The budget statement is a statement for the one-year period immediately following the registration of the declaration and description and shall contain,

- (a) a statement of the common expenses of the corporation;
- (b) a statement of the proposed amount of each expense of the corporation, including the cost of the reserve fund study required for the year, the cost of the performance audit under section 44 and the cost of preparing audited financial statements if subsection 43 (7) requires the declarant to deliver them within one year following the registration of the declaration and description;
- (c) particulars of the type, frequency and level of the services to be provided;
- (d) a statement of the projected monthly common expense contribution for each type of unit;
- (e) a statement of the portion of the common expenses to be paid into a reserve fund;
- (f) a statement of the status of all pending lawsuits material to the property of which the declarant has actual knowledge and that may affect the property after the registration of a deed to the unit from the declarant to the purchaser;
- (g) a statement of the amounts of all current or expected fees, charges, rents or other revenue to be paid to or by the corporation or by any of the owners for the use of the common elements or other facilities related to the property, unless a turn over meeting has been held under section 43;
- (h) a statement of all services not included in the budget that the declarant provides, or expenses that the declarant pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;
- (i) a statement of the projected amounts in all reserve funds at the end of the current fiscal year;
- (j) a summary of the most recent reserve fund study, if any; and
- (k) all other material that the regulations made under this Act require. 1998, c. 19, s. 72 (6).

Rescission of agreement

73. (1) A purchaser who receives a disclosure statement under subsection 72 (1) may, in accordance with this section, rescind the agreement of purchase and sale before accepting a deed to the unit being purchased that is in registerable form. 1998, c. 19, s. 73 (1).

Notice of rescission

(2) To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser's solicitor shall give a written notice of rescission to the declarant or to the declarant's solicitor who must receive the notice within 10 days of the later of,

- (a) the date that the purchaser receives the disclosure statement; and
- (b) the date that the purchaser receives a copy of the agreement of purchase and sale executed by the declarant and the purchaser. 1998, c. 19, s. 73 (2).

Refund upon rescission

(3) If a declarant or the declarant's solicitor receives a notice of rescission from a purchaser under this section, the declarant shall promptly refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price, together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it. 1998, c. 19, s. 73 (3).

Material changes in disclosure statement

74. (1) Whenever there is a material change in the information contained or required to be contained in a disclosure statement delivered to a purchaser under subsection 72 (1) or a revised disclosure statement or a notice delivered to a purchaser under this section, the declarant shall deliver a revised disclosure statement or a notice to the purchaser. 1998, c. 19, s. 74 (1).

Definition

(2) In this section,

“material change” means a change or a series of changes that a reasonable purchaser, on an objective basis, would have regarded collectively as sufficiently important to the decision to purchase a unit or proposed unit in the corporation that it is likely that the purchaser would not have entered into an agreement of purchase and sale for the unit or the proposed unit or would have exercised the right to rescind such an agreement of purchase and sale under section 73, if the disclosure statement had contained the change or series of changes, but does not include,

- (a) a change in the contents of the budget of the corporation for the current fiscal year if more than one year has passed since the registration of the declaration and description for the corporation,
- (b) a substantial addition, alteration or improvement within the meaning of subsection 97 (6) that the corporation makes to the common elements after a turn-over meeting has been held under section 43,
- (c) a change in the portion of units or proposed units that the declarant intends to lease,
- (d) a change in the schedule of the proposed commencement and completion dates for the amenities of which construction had not been completed as of the date on which the disclosure statement was made, or
- (e) a change in the information contained in the statement described in subsection 161 (1) of the services provided by the municipality or the Minister of Municipal Affairs and Housing, as the case may be, as described in that subsection, if the unit or the proposed unit is in a vacant land condominium corporation. 1998, c. 19, s. 74 (2).

Contents of revised statement

(3) The revised disclosure statement or notice required under subsection (1) shall clearly identify all changes that in the reasonable belief of the declarant may be material changes and summarize the particulars of them. 1998, c. 19, s. 74 (3).

Time of delivery

(4) The declarant shall deliver the revised disclosure statement or notice to the purchaser within a reasonable time after the material change mentioned in subsection (1) occurs and, in any event, no later than 10 days before delivering to the purchaser a deed to the unit being purchased that is in registerable form. 1998, c. 19, s. 74 (4).

Purchaser's application to court

(5) Within 10 days after receiving a revised disclosure statement or a notice under subsection (1), a purchaser may make an application to the Superior Court of Justice for a determination whether a change or a series of changes set out in the statement or notice is a material change. 1998, c. 19, s. 74 (5); 2000, c. 26, Sched. B, s. 7 (5).

Rescission after material change

(6) If a change or a series of changes set out in a revised disclosure statement or a notice delivered to a purchaser constitutes a material change or if a material change occurs that the declarant does not disclose in a revised disclosure statement or notice as required by subsection (1), the purchaser may, before accepting a deed to the unit being purchased that is in registerable form, rescind the agreement of purchase and sale within 10 days of the latest of,

- (a) the date on which the purchaser receives the revised disclosure statement or the notice, if the declarant delivered a revised disclosure statement or notice to the purchaser;
- (b) the date on which the purchaser becomes aware of a material change, if the declarant has not delivered a revised disclosure statement or notice to the purchaser as required by subsection (1) with respect to the change; and
- (c) the date on which the Superior Court of Justice makes a determination under subsection (5) or (8) that the change is material, if the purchaser or the declarant, as the case may be, has made an application for the determination. 1998, c. 19, s. 74 (6); 2000, c. 26, Sched. B, s. 7 (5).

Notice of rescission

(7) To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser's solicitor shall give a written notice of rescission to the declarant or to the declarant's solicitor. 1998, c. 19, s. 74 (7).

Declarant's application to court

(8) Within 10 days after receiving a notice of rescission, the declarant may make an application to the Superior Court of Justice for a determination whether the change or the series of changes on which the rescission is based constitutes a material change, if the purchaser has not already made an application for the determination under subsection (5). 1998, c. 19, s. 74 (8); 2000, c. 26, Sched. B, s. 7 (5).

Refund upon rescission

(9) A declarant who receives a notice of rescission from a purchaser under this section shall refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price,

together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it. 1998, c. 19, s. 74 (9).

Time of refund

- (10) The declarant shall make the refund,
- (a) within 10 days after receiving a notice of rescission, if neither the purchaser nor the declarant has made an application for a determination described in subsection (5) or (8) respectively; or
 - (b) within 10 days after the court makes a determination that the change is material, if the purchaser has made an application under subsection (5) or the declarant has made an application under subsection (8). 1998, c. 19, s. 74 (10).

Accountability for budget statement

75. (1) The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description. 1998, c. 19, s. 75 (1).

Common expenses

(2) The declarant shall pay to the corporation the amount by which the total actual amount of common expenses incurred for the period covered by the budget statement, except for those attributable to the termination of an agreement under section 111 or 112, exceeds the total budgeted amount. 1998, c. 19, s. 75 (2).

Revenue

(3) The declarant shall pay to the corporation the amount by which the total actual amount of fees, charges, rents and other revenue paid or to be paid to the corporation, during the period covered by the budget statement, for the use of any part of the common elements or assets or of any other facilities related to the property, is less than the total budgeted amount. 1998, c. 19, s. 75 (3).

Set-off

(4) If the total actual amount of revenue described in subsection (3) exceeds the total budgeted amount, the declarant may deduct the excess from any amount payable under subsection (2). 1998, c. 19, s. 75 (4).

Notice of payment

(5) After receiving the audited financial statements for the period covered by the budget statement, the board shall compare the actual amount of common expenses and revenue described in subsections (2) and (3) for the period covered by the budget statement with the budgeted amounts and shall, within 30 days of receiving the audited financial statements, give written notice to the declarant of the amount that the declarant is required to pay to the corporation under this section. 1998, c. 19, s. 75 (5).

Time for payment

(6) Within 30 days of receiving the notice, the declarant shall pay the corporation the amount that it is required to pay under this section. 1998, c. 19, s. 75 (6).

Status certificate

76. (1) The corporation shall give to each person who so requests a status certificate with respect to a unit in the corporation, in the prescribed form, that specifies the date on which it was made and that contains,

- (a) a statement of the common expenses for the unit and the default, if any, in payment of the common expenses;
- (b) a statement of the increase, if any, in the common expenses for the unit that the board has declared since the date of the budget of the corporation for the current fiscal year and the reason for the increase;
- (c) a statement of the assessments, if any, that the board has levied against the unit since the date of the budget of the corporation for the current fiscal year to increase the contribution to the reserve fund and the reason for the assessments;
- (d) a statement of the address for service of the corporation;
- (e) a statement of the names and address for service of the directors and officers of the corporation;
- (f) a copy of the current declaration, by-laws and rules;
- (g) a copy of all applications made under section 109 to amend the declaration for which the court has not made an order;
- (h) a statement of all outstanding judgments against the corporation and the status of all legal actions to which the corporation is a party;

- (i) a copy of the budget of the corporation for the current fiscal year, the last annual audited financial statements and the auditor's report on the statements;
- (j) a list of all current agreements mentioned in section 111, 112 or 113 and all current agreements between the corporation and another corporation or between the corporation and the owner of the unit;
- (k) a statement that the person requesting the status certificate has the rights described in subsections (7) and (8) with respect to the agreements mentioned in clause (j);
- (l) a statement whether the parties have complied with all current agreements mentioned in clause 98 (1) (b) with respect to the unit;
- (m) a statement with respect to,
 - (i) the most recent reserve fund study and updates to it,
 - (ii) the amount in the reserve fund no earlier than at the end of a month within 90 days of the date of the status certificate, and
 - (iii) current plans, if any, to increase the reserve fund under subsection 94 (8);
- (n) a statement of those additions, alterations or improvements to the common elements, those changes in the assets of the corporation and those changes in a service of the corporation that are substantial and that the board has proposed but has not implemented, together with a statement of the purpose of them;
- (o) a statement of the number of units for which the corporation has received notice under section 83 that the unit was leased during the fiscal year preceding the date of the status certificate;
- (p) a certificate or memorandum of insurance for each of the current insurance policies;
- (q) a statement of the amounts, if any, that this Act requires be added to the common expenses payable for the unit;
- (r) a statement whether the Superior Court of Justice has made an order appointing an inspector under section 130 or an administrator under section 131;
- (s) all other material that the regulations made under this Act require. 1998, c. 19, s. 76 (1); 2000, c. 26, Sched. B, s. 7 (5).

Fee for certificate

- (2) The corporation may charge the prescribed fee for providing the status certificate. 1998, c. 19, s. 76 (2).

Time for giving certificate

- (3) The corporation shall give the status certificate within 10 days after receiving a request for it and payment of the fee charged by the corporation for it. 1998, c. 19, s. 76 (3).

Omission of information

- (4) If a status certificate that a corporation has given under subsection (1) omits material information that it is required to contain, it shall be deemed to include a statement that there is no such information. 1998, c. 19, s. 76 (4).

Default in giving certificate

- (5) A corporation that does not give a status certificate within the required time shall be deemed to have given a certificate on the day immediately after the required time has expired stating that,
 - (a) there has been no default in the payment of common expenses for the unit;
 - (b) the board has not declared any increase in the common expenses for the unit since the date of the budget of the corporation for the current fiscal year; and
 - (c) the board has not levied any assessments against the unit since the date of the budget of the corporation for the current fiscal year to increase the contribution to the reserve fund. 1998, c. 19, s. 76 (5).

Effect of certificate

- (6) The status certificate binds the corporation, as of the date it is given or deemed to have been given, with respect to the information that it contains or is deemed to contain, as against a purchaser or mortgagee of a unit who relies on the certificate. 1998, c. 19, s. 76 (6).

Examination of agreements

(7) Upon receiving a written request and reasonable notice, the corporation shall permit a person who has requested a status certificate and paid the fee charged by the corporation for the certificate, or an agent of the person duly authorized in writing, to examine the agreements mentioned in clause (1) (k) at a reasonable time and at a reasonable location. 1998, c. 19, s. 76 (7).

Copies of agreements

(8) The corporation shall, within a reasonable time, provide copies of the agreements to a person examining them, if the person so requests and pays a reasonable fee to compensate the corporation for the labour and copying charges. 1998, c. 19, s. 76 (8).

Information on corporation

77. On the request of any person, the corporation shall, without fee, provide the names and address for service of the directors and officers of the corporation, the person responsible for the management of the property of the corporation and the person to whom the corporation has delegated the responsibility for providing status certificates. 1998, c. 19, s. 77.

SALE OF UNITS

Implied covenants

78. (1) Every agreement of purchase and sale of a proposed unit entered into by a declarant before the registration of the declaration and description that creates the unit shall be deemed to contain the following covenants by the declarant:

1. If the proposed unit is for residential purposes, a covenant to take all reasonable steps to sell the other residential units included in the property without delay, except for the units that the declarant intends to lease.
2. A covenant to take all reasonable steps to deliver to the purchaser without delay a deed to the unit that is in registerable form.
3. A covenant to hold in trust for the corporation the money, if any, that the declarant collects from the purchaser on behalf of the corporation. 1998, c. 19, s. 78 (1).

No merger of covenants

(2) The covenants shall be deemed not to merge by operation of law on delivery to the purchaser of a deed that is in registerable form. 1998, c. 19, s. 78 (2).

Compliance order

(3) If the declarant breaches a covenant described in subsection (1), the purchaser under the agreement of purchase and sale may make an application for an order under section 134 and an order may be made under that section. 1998, c. 19, s. 78 (3).

Duty to register declaration and description

79. (1) A declarant who has entered into an agreement of purchase and sale of a proposed unit shall take all reasonable steps to complete the buildings required by the agreement subject to all prescribed requirements and to register, without delay, a declaration and description in respect of the property in which the proposed unit will be included. 1998, c. 19, s. 79 (1).

No right to terminate

(2) Despite any provision to the contrary in the agreement of purchase and sale, the declarant is not entitled to terminate an agreement of purchase and sale of a proposed unit by reason only of the failure to register the declaration and description within a period of time specified in the agreement, unless the purchaser consents to the termination in writing. 1998, c. 19, s. 79 (2).

Application to court

(3) Despite subsection (2), if a declaration and description have not been registered, the declarant may, upon 15 days written notice to the purchasers of all proposed units in the property affected by the declaration and description, make an application to the Superior Court of Justice for an order terminating the agreements of purchase and sale of the purchasers. 1998, c. 19, s. 79 (3); 2000, c. 26, Sched. B, s. 7 (5).

Subsequent registration

(4) The court may, in the order, provide that a declaration and description shall not be registered in respect of the property in which the proposed units will be included during a period specified in the order. 1998, c. 19, s. 79 (4).

Considerations

- (5) On an application for an order, the court shall consider whether,
- (a) the declarant has taken all reasonable steps to register a declaration and description;
 - (b) a declaration and description can be registered within a reasonable period of time; and
 - (c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the declarant. 1998, c. 19, s. 79 (5).

Registration of order

- (6) The order is ineffective until a certified copy of it is registered. 1998, c. 19, s. 79 (6).

Interim occupancy

80. (1) An agreement of purchase and sale may permit or require interim occupancy of a proposed unit. 1998, c. 19, s. 80 (1).

Definition

- (2) In this section,

“interim occupancy” means the occupancy of a proposed unit before the purchaser receives a deed to the unit that is in registerable form. 1998, c. 19, s. 80 (2).

Right to pay in full

(3) Despite any provision to the contrary in the agreement of purchase and sale, before the expiry of the time period mentioned in subsection 73 (2) for rescinding the agreement, a purchaser may elect to pay in full, on assuming interim occupancy of the proposed unit, the balance of the purchase price remaining after deducting the amounts paid under the agreement before assuming interim occupancy. 1998, c. 19, s. 80 (3).

Occupancy fee

(4) If the purchaser assumes interim occupancy of a proposed unit or is required to do so under the agreement of purchase and sale, the declarant may charge the purchaser a monthly occupancy fee which shall not be greater than the total of the following amounts:

1. Where applicable, interest calculated on a monthly basis on the unpaid balance of the purchase price at the prescribed rate.
2. An amount reasonably estimated on a monthly basis for municipal taxes attributable to the unit.
3. The projected monthly common expense contribution for the unit. 1998, c. 19, s. 80 (4).

Reserve fund contribution

(5) If the declarant charges the purchaser a monthly occupancy fee for interim occupancy of a proposed unit for residential purposes for longer than six months and the monthly occupancy fee includes a projected contribution to the reserve fund of the corporation, then, with respect to the occupancy fee for each month after the sixth month, the declarant shall hold in trust and remit to the corporation upon registering the declaration and description the portion of the monthly occupancy fee that represents the projected contribution to the reserve fund. 1998, c. 19, s. 80 (5).

Rights and duties of declarant

- (6) If a purchaser assumes interim occupancy of a proposed unit, the declarant,
- (a) shall provide those services that the corporation will have a duty to provide to owners after the registration of the declaration and description that creates the unit;
 - (b) shall repair and maintain the proposed property and the proposed unit in the same manner as the corporation will have a duty to repair after damage and maintain after the registration of the declaration and description that creates the unit;
 - (c) has the same right of entry that the corporation will have after the registration of the declaration and description that creates the unit;
 - (d) may withhold consent to an assignment of the right to occupy the proposed unit;
 - (e) may charge a reasonable fee for consenting to an assignment of the right to occupy the proposed unit; and
 - (f) shall, within 30 days of the registration of the declaration and description that creates the unit, notify the purchaser in writing of the date and instrument numbers of the registration, unless within that time the purchaser receives a deed to the unit that is in registerable form. 1998, c. 19, s. 80 (6).

Application of *Residential Tenancies Act, 2006*

(7) The rights and duties described in subsection (6) apply despite any provision to the contrary in the *Residential Tenancies Act, 2006*. 1998, c. 19, s. 80 (11); 2006, c. 17, s. 248 (3).

Refund of municipal taxes

(8) The declarant shall, on delivering to the purchaser a deed that is in registerable form or as soon as is practicable after delivery, refund to the purchaser the portion of the monthly occupancy fee that the purchaser has paid on account of municipal taxes attributable to the proposed unit in excess of the amount actually assessed against the unit. 1998, c. 19, s. 80 (8).

Municipal taxes payable

(9) If the portion of the monthly occupancy fee that the purchaser has paid on account of municipal taxes attributable to the proposed unit is insufficient to pay the amount actually assessed against the unit, the declarant may require the purchaser to pay the difference between the two amounts. 1998, c. 19, s. 80 (9).

Non-application

(10) Sections 149, 150, 151, 165, 166 and 167 and Part VII of the *Residential Tenancies Act, 2006* do not apply to interim occupancy and monthly occupancy fees charged under this section. 2000, c. 26, Sched. B, s. 7 (6); 2006, c. 17, s. 248 (4).

(11) SPENT: 1998, c. 19, s. 80 (11).

(12) SPENT: 1998, c. 19, s. 80 (12).

Money held in trust

81. (1) A declarant shall ensure that a trustee of a prescribed class or the declarant's solicitor receives and holds in trust all money, together with interest earned on it, as soon as a person makes a payment,

- (a) with respect to reserving a right to enter into an agreement of purchase and sale for the purchase of a proposed unit;
- (b) on account of an agreement of purchase and sale of a proposed unit; or
- (c) on account of a sale of a proposed unit. 1998, c. 19, s. 81 (1).

Exception

(2) Subsection (1) does not apply to money received,

- (a) on account of the purchase of personal property included in the proposed unit that is not to be permanently affixed to the land; or
- (b) as an occupancy fee under subsection 80 (4). 1998, c. 19, s. 81 (2).

Reservation money

(3) If a person has paid money to reserve a right to enter into an agreement of purchase and sale for the purchase of a proposed unit and subsequently enters into such an agreement with the declarant, the declarant shall, on entering into the agreement, credit the money received to the purchase price under the agreement, despite any provision of the agreement. 1998, c. 19, s. 81 (3).

Trustee

(4) Upon receiving money that is required to be held in trust under subsection (1), a trustee of a prescribed class shall hold the money in trust in a separate account in Ontario designated as a trust account at a bank listed in Schedule I or II to the *Bank Act* (Canada), a trust corporation, a loan corporation or a credit union. 1998, c. 19, s. 81 (4); 2002, c. 8, Sched. I, s. 7 (1).

Declarant's solicitor

(5) Upon receiving money that is required to be held in trust under subsection (1), the declarant's solicitor shall hold the money in trust in a trust account in Ontario. 1998, c. 19, s. 81 (5).

Evidence of compliance

(6) Within 10 days of the payment of the money under subsection (1), the declarant shall provide to the person who paid the money written evidence, in the form prescribed by the Minister, of compliance with subsection (1) and one of subsections (4) and (5). 1998, c. 19, s. 81 (6).

Duration of trust

(7) Despite the registration of a declaration and description, the person who holds money in trust under subsection (1) shall hold it in trust until,

- (a) the person holding the money in trust disposes of it to the person entitled to it, where the disposal is done in accordance with this Act and an agreement that the person who paid the money has entered into with respect to the proposed unit; or
- (b) the declarant ensures that security of a prescribed class is provided for the money, except if the money has been received under clause (1) (a) and has not been credited to the purchase price under the agreement. 1998, c. 19, s. 81 (7).

Interest

82. (1) The declarant shall pay interest at the prescribed rate to the purchaser on all money that a person pays on account of the purchase price of a proposed unit or that the declarant credits to the purchase price of a proposed unit. 1998, c. 19, s. 82 (1).

Money released from trust

(2) The interest is payable on the money even if, under clause 81 (7) (b), the declarant provides security of a prescribed class for the money. 1998, c. 19, s. 82 (2).

Calculation

(3) The interest shall be calculated from the day the person pays the money received until the day the proposed unit is available for possession or occupancy in accordance with the purchaser's agreement of purchase and sale with the declarant. 1998, c. 19, s. 82 (3).

Time of payment

- (4) The interest shall be paid to the purchaser by way of payment or set-off,
 - (a) on the day the declarant delivers to the purchaser a deed to the proposed unit that is in registerable form, if the declarant so elects; or
 - (b) on the day the proposed unit is available for possession or occupancy in accordance with the purchaser's agreement of purchase and sale with the declarant, otherwise. 1998, c. 19, s. 82 (4).

Compound interest

(5) A declarant who elects to pay the interest to the purchaser on the day of delivering to the purchaser a deed to the proposed unit that is in registerable form shall, on that day, pay interest to the purchaser at the prescribed rate on the interest that the declarant is required to pay under subsection (1). 1998, c. 19, s. 82 (5).

Calculation

(6) The declarant shall pay the interest payable under subsection (5) from the day the proposed unit is available for possession or occupancy in accordance with the purchaser's agreement of purchase and sale with the declarant until the day of payment. 1998, c. 19, s. 82 (6).

Terminated agreements

(7) If an agreement of purchase and sale provides that a purchaser is entitled to a return of money paid under the agreement upon termination of the agreement and the agreement is terminated, the declarant shall pay interest at the prescribed rate to the purchaser on the money returned. 1998, c. 19, s. 82 (7).

Excess interest

(8) The declarant is entitled to the excess of all interest earned on money held in trust over the interest it is required to pay under this section. 1998, c. 19, s. 82 (8).

LEASE OF UNITS

Notification by owner

83. (1) The owner of a unit who leases the unit or renews a lease of the unit shall, within 30 days of entering into the lease or the renewal, as the case may be,

- (a) notify the corporation that the unit is leased;
- (b) provide the corporation with the lessee's name, the owner's address and a copy of the lease or renewal or a summary of it in the form prescribed by the Minister; and

(c) provide the lessee with a copy of the declaration, by-laws and rules of the corporation. 1998, c. 19, s. 83 (1).

Termination of lease

(2) If a lease of a unit is terminated and not renewed, the owner of the unit shall notify the corporation in writing. 1998, c. 19, s. 83 (2).

Record of notices

(3) A corporation shall maintain a record of the notices that it receives under this section. 1998, c. 19, s. 83 (3).

PART VI OPERATION COMMON EXPENSES

Contribution of owners

84. (1) Subject to the other provisions of this Act, the owners shall contribute to the common expenses in the proportions specified in the declaration. 1998, c. 19, s. 84 (1).

Common surplus

(2) A common surplus in a corporation shall be applied either against future common expenses or paid into the reserve fund, and except on termination, shall not be distributed to the owners or mortgagees of the units. 1998, c. 19, s. 84 (2).

No avoidance

- (3) An owner is not exempt from the obligation to contribute to the common expenses even if,
- (a) the owner has waived or abandoned the right to use the common elements or part of them;
 - (b) the owner is making a claim against the corporation; or
 - (c) the declaration, by-laws or rules restrict the owner from using the common elements or part of them. 1998, c. 19, s. 84 (3).

Lien upon default

85. (1) If an owner defaults in the obligation to contribute to the common expenses, the corporation has a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount. 1998, c. 19, s. 85 (1).

Expiration of lien

(2) The lien expires three months after the default that gave rise to the lien occurred unless the corporation within that time registers a certificate of lien in a form prescribed by the Minister. 1998, c. 19, s. 85 (2).

Certificate of lien

- (3) A certificate of lien when registered covers,
- (a) the amount owing under all of the corporation's liens against the owner's unit that have not expired at the time of registration of the certificate;
 - (b) the amount by which the owner defaults in the obligation to contribute to the common expenses after the registration of the certificate; and
 - (c) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in clauses (a) and (b), including the costs of preparing and registering the certificate of lien and a discharge of it. 1998, c. 19, s. 85 (3).

Notice to owner

(4) At least 10 days before the day a certificate of lien is registered, the corporation shall give written notice of the lien to the owner whose unit is affected by the lien. 1998, c. 19, s. 85 (4).

Service of notice

(5) The corporation shall give the notice by personal service or by sending it by prepaid mail addressed to the owner at the address for service that appears in the record of the corporation maintained under subsection 47 (2). 1998, c. 19, s. 85 (5).

Lien enforcement

(6) The lien may be enforced in the same manner as a mortgage. 1998, c. 19, s. 85 (6).

Discharge of lien

(7) Upon payment of the amounts described in subsection (3), the corporation shall prepare and register a discharge of the certificate of lien in the form prescribed by the Minister and shall advise the owner in writing of the particulars of the registration. 1998, c. 19, s. 85 (7).

Priority of lien

86. (1) Subject to subsection (2), a lien mentioned in subsection 85 (1) has priority over every registered and unregistered encumbrance even though the encumbrance existed before the lien arose but does not have priority over,

- (a) a claim of the Crown other than by way of a mortgage;
- (b) a claim for taxes, charges, rates or assessments levied or recoverable under the *Municipal Act, 2001*, the *City of Toronto Act, 2006*, the *Education Act*, the *Local Roads Boards Act* or the *Statute Labour Act*; or
- (c) a lien or claim that is prescribed. 1998, c. 19, s. 86 (1); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 7.

Exception, non-residential lien

(2) A lien in respect of a unit for non-residential purposes does not have priority under this section in respect of the amount by which the owner of the unit has defaulted in the obligation to contribute to the common expenses before the coming into force of this section. 1998, c. 19, s. 86 (2).

Notice of lien

(3) The corporation shall, on or before the day a certificate of lien is registered, give written notice of the lien to every encumbrancer whose encumbrance is registered against the title of the unit affected by the lien. 1998, c. 19, s. 86 (3).

Service of notice

(4) The corporation shall give the notice by personal service or by sending it by registered prepaid mail addressed to the encumbrancer at the encumbrancer's last known address. 1998, c. 19, s. 86 (4).

Effect of no notice

(5) Subject to subsection (6), the lien loses its priority over an encumbrance unless the corporation gives the required notice to the encumbrancer. 1998, c. 19, s. 86 (5).

Priority if notice late

(6) If a corporation gives notice of a lien to an encumbrancer after the day the certificate of lien is registered, the lien shall have priority over the encumbrance to the extent of,

- (a) the arrears of common expenses that accrued during the three months before the day notice is given and that continue to accrue subsequent to that day; and
- (b) all interest owing on the arrears and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the arrears. 1998, c. 19, s. 86 (6).

Default with respect to leased unit

87. (1) If an owner who has leased a unit defaults in the owner's obligation to contribute to the common expenses, the corporation may, by written notice to the lessee, require the lessee to pay to the corporation the lesser of the amount of the default and the amount of the rent due under the lease. 1998, c. 19, s. 87 (1).

Service on lessee

(2) The corporation shall give the notice to the lessee by personal service or by sending it by prepaid mail addressed to the lessee at the address of the unit. 1998, c. 19, s. 87 (2).

Notice to owner

(3) If the corporation gives a notice to a lessee, it shall give a copy of the notice to the owner of the unit that the lessee has leased. 1998, c. 19, s. 87 (3).

Service on owner

(4) The corporation shall give the copy of the notice to the owner by personal service or by sending it by prepaid mail addressed to the owner at the address for service that appears in the record of the corporation maintained under subsection 47 (2). 1998, c. 19, s. 87 (4).

Rent paid to corporation

(5) Upon receiving a notice under subsection (1), the lessee shall make the required payment to the corporation even if an encumbrancer of the unit has acquired the right of the lessor to receive rent under the lease. 1998, c. 19, s. 87 (5).

No default in lease

(6) The payment to the corporation shall constitute payment towards rent under the lease and the lessee shall not by reason only of the payment to the corporation be considered to be in default of an obligation in the lease. 1998, c. 19, s. 87 (6).

Mortgagee's rights

88. (1) Every mortgage of a unit shall be deemed to contain a provision that,

- (a) the mortgagee has the right to collect the owner's contribution to the common expenses and shall promptly pay the amount so collected to the corporation on behalf of the owner;
- (b) the owner's default in the obligation to contribute to the common expenses constitutes default under the mortgage;
- (c) the mortgagee has the right to pay,
 - (i) the amounts of the owner's contribution to the common expenses that from time to time fall due and are unpaid in respect of the mortgaged premises,
 - (ii) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in subclause (i), including, where applicable, the costs of preparing and registering a certificate of lien and a discharge of it;
- (d) payments made by the mortgagee under clause (c), together with interest and all reasonable costs, charges and expenses incurred in respect of the payments, are to be added to the debt secured by the mortgage and to be payable, with interest at the rate payable on the mortgage; and
- (e) if after demand the owner fails to fully reimburse the mortgagee, the mortgage immediately becomes due and payable at the option of the mortgagee. 1998, c. 19, s. 88 (1).

Statement of common expenses

(2) A corporation shall, on request and free of charge, provide to the mortgagee of a unit a written statement setting out the common expenses in respect of the unit and, if there is a default in the payment of them, the amounts described in subsection 85 (3) in respect of the unit. 1998, c. 19, s. 88 (2).

REPAIR AND MAINTENANCE

Repair after damage

89. (1) Subject to sections 91 and 123, the corporation shall repair the units and common elements after damage. 1998, c. 19, s. 89 (1).

Extent of obligation

(2) The obligation to repair after damage includes the obligation to repair and replace after damage or failure but, subject to subsection (5), does not include the obligation to repair after damage improvements made to a unit. 1998, c. 19, s. 89 (2).

Determination of improvements

(3) For the purpose of this section, the question of what constitutes an improvement to a unit shall be determined by reference to a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 89 (3).

Standard unit

(4) A standard unit for the class of unit to which the unit belongs shall be,

- (a) the standard unit described in a by-law made under clause 56 (1) (h), if the board has made a by-law under that clause;
- (b) the standard unit described in the schedule mentioned in clause 43 (5) (h), if the board has not made a by-law under clause 56 (1) (h). 1998, c. 19, s. 89 (4).

Transition, existing corporations

(5) A corporation that was created before the day this section comes into force and that had the obligation of repairing after damage improvements made to a unit before the registration of the declaration and description shall continue to have the obligation unless it has, by by-law, established what constitutes a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 89 (5).

Maintenance

90. (1) Subject to section 91, the corporation shall maintain the common elements and each owner shall maintain the owner's unit. 1998, c. 19, s. 90 (1).

Normal repairs included

(2) The obligation to maintain includes the obligation to repair after normal wear and tear but does not include the obligation to repair after damage. 1998, c. 19, s. 90 (2).

Provisions of declaration

91. The declaration may alter the obligation to maintain or to repair after damage as set out in this Act by providing that,
- (a) subject to section 123, each owner shall repair the owner's unit after damage;
 - (b) the owners shall maintain the common elements or any part of them;
 - (c) each owner shall maintain and repair after damage those parts of the common elements of which the owner has the exclusive use; and
 - (d) the corporation shall maintain the units or any part of them. 1998, c. 19, s. 91.

Work done for owner

92. (1) If the declaration provides that the owner has an obligation to repair after damage and the owner fails to carry out the obligation within a reasonable time after damage occurs, the corporation shall do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (1).

Same, maintenance

(2) If the declaration provides that the owner has an obligation to maintain the common elements or any part of them and the owner fails to carry out the obligation within a reasonable time, the corporation may do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (2).

Same, maintenance of units

(3) If an owner has an obligation under this Act to maintain the owner's unit and fails to carry out the obligation within a reasonable time and if the failure presents a potential risk of damage to the property or the assets of the corporation or a potential risk of personal injury to persons on the property, the corporation may do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (3).

Cost

(4) An owner shall be deemed to have consented to the work done by a corporation under this section and the cost of the work shall be added to the owner's contribution to the common expenses. 1998, c. 19, s. 92 (4).

Reserve fund

93. (1) The corporation shall establish and maintain one or more reserve funds. 1998, c. 19, s. 93 (1).

Purpose of fund

(2) A reserve fund shall be used solely for the purpose of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 93 (2).

Designation not required

(3) A fund set up for the purpose mentioned in subsection (2) shall be deemed to be a reserve fund even though it may not be so designated. 1998, c. 19, s. 93 (3).

Contributions to fund

(4) The corporation shall collect contributions to the reserve fund from the owners, as part of their contributions to the common expenses. 1998, c. 19, s. 93 (4).

Amount of contributions

(5) Unless the regulations made under this Act specify otherwise, until the corporation conducts a first reserve fund study and implements a proposed plan under section 94, the total amount of the contributions to the reserve fund shall be the greater of the amount specified in subsection (6) and 10 per cent of the budgeted amount required for contributions to the common expenses exclusive of the reserve fund. 1998, c. 19, s. 93 (5).

Same, after first reserve fund study

(6) The total amount of the contributions to the reserve fund after the time period specified in subsection (5) shall be the amount that is reasonably expected to provide sufficient funds for the major repair and replacement of the common elements and assets of the corporation, calculated on the basis of the expected repair and replacement costs and the life expectancy of the common elements and assets of the corporation. 1998, c. 19, s. 93 (6).

Income earned

(7) Interest and other income earned from the investment of money in the reserve fund shall form part of the fund. 1998, c. 19, s. 93 (7).

Reserve fund study

94. (1) The corporation shall conduct periodic studies to determine whether the amount of money in the reserve fund and the amount of contributions collected by the corporation are adequate to provide for the expected costs of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 94 (1).

Contents of study

(2) A reserve fund study shall be of the prescribed class, shall include the material that is prescribed for its class and shall be performed in accordance with the standards that are prescribed for its class. 1998, c. 19, s. 94 (2).

Updates

(3) For the purposes of this Act, an update to a reserve fund study shall constitute a class of reserve fund study. 1998, c. 19, s. 94 (3).

Time of study

(4) A corporation created on or after the day this section comes into force shall conduct a reserve fund study within the year following the registration of the declaration and description and subsequently at the prescribed times. 1998, c. 19, s. 94 (4); 2001, c. 9, Sched. D, s. 3 (2).

Same, existing corporations

(5) A corporation created before the day this section comes into force shall conduct a reserve fund study at the prescribed times. 1998, c. 19, s. 94 (5).

Person conducting study

(6) A reserve fund study shall be conducted by a person of a prescribed class who shall have no affiliation with the board or with the corporation that is contrary to the regulations made under this Act. 1998, c. 19, s. 94 (6).

Cost of study

(7) The cost of conducting the study shall be a common expense which the board may charge to the reserve fund. 1998, c. 19, s. 94 (7).

Plan for future funding

(8) Within 120 days of receiving a reserve fund study, the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period of time and in accordance with the prescribed requirements, the fund will be adequate for the purpose for which it was established. 1998, c. 19, s. 94 (8).

Copy of plan

(9) Within 15 days of proposing a plan, the board shall,

- (a) send to the owners a notice containing a summary of the study, a summary of the proposed plan and a statement indicating the areas, if any, in which the proposed plan differs from the study; and
- (b) send to the auditor a copy of the study, a copy of the proposed plan and a copy of the notice sent to the owners under clause (a). 1998, c. 19, s. 94 (9).

Implementation of proposed plan

(10) The board shall implement the proposed plan after the expiration of 30 days following the day on which the board complies with subsection (9). 1998, c. 19, s. 94 (10).

Use of reserve fund

95. (1) No part of a reserve fund shall be used except for the purpose mentioned in subsection 93 (2). 1998, c. 19, s. 95 (1).

Board's use

(2) The board does not require the consent of the owners to make an expenditure out of a reserve fund. 1998, c. 19, s. 95 (2).

No distribution

(3) The amount of a reserve fund shall constitute an asset of the corporation and shall not be distributed to the mortgagees of the units or, except on termination of the corporation, to the owners of the units. 1998, c. 19, s. 95 (3).

Warranties

96. (1) All warranties given with respect to work and materials furnished for a unit shall be for the benefit of an owner. 1998, c. 19, s. 96 (1).

Enforcement by corporation

(2) The corporation may enforce the warranties mentioned in subsection (1) on behalf of an owner if the corporation does work on behalf of the owner under section 92. 1998, c. 19, s. 96 (2).

Same, common elements

(3) All warranties given with respect to work and materials furnished for the common elements shall be for the benefit of the corporation. 1998, c. 19, s. 96 (3).

CHANGES TO COMMON ELEMENTS AND ASSETS

Changes made by corporation

97. (1) If the corporation has an obligation to repair the units or common elements after damage or to maintain them and the corporation carries out the obligation using materials that are as reasonably close in quality to the original as is appropriate in accordance with current construction standards, the work shall be deemed not to be an addition, alteration or improvement to the common elements or a change in the assets of the corporation for the purpose of this section. 1998, c. 19, s. 97 (1).

Changes made without notice

(2) A corporation may, by resolution of the board and without notice to the owners, make an addition, alteration or improvement to the common elements, a change in the assets of the corporation or a change in a service that the corporation provides to the owners if,

- (a) it is necessary to make the addition, alteration, improvement or change to comply with an agreement mentioned in section 113 or the requirements imposed by any general or special Act or regulations or by-laws made under that Act;
- (b) in the opinion of the board, it is necessary to make the addition, alteration, improvement or change to ensure the safety or security of persons using the property or assets of the corporation or to prevent imminent damage to the property or assets; or
- (c) subject to the regulations made under this Act, the estimated cost, in any given month or other prescribed period, if any, of making the addition, alteration, improvement or change is no more than the greater of \$1,000 and 1 per cent of the annual budgeted common expenses for the current fiscal year. 1998, c. 19, s. 97 (2).

Changes made on notice

(3) A corporation may make an addition, alteration or improvement to the common elements, a change in the assets of the corporation or a change in a service that the corporation provides to the owners if,

- (a) the corporation has sent a notice to the owners that,
 - (i) describes the proposed addition, alteration, improvement or change,
 - (ii) contains a statement of the estimated cost of the proposed addition, alteration, improvement or change indicating the manner in which the corporation proposes to pay the cost,
 - (iii) specifies that the owners have the right, in accordance with section 46 and within 30 days of receiving the notice, to requisition a meeting of owners, and
 - (iv) contains a copy of section 46 and this section; and
- (b) one of the following conditions has been met:
 1. The owners have not requisitioned a meeting in accordance with section 46 within 30 days of receiving a notice under clause (a).

2. The owners have requisitioned a meeting in accordance with section 46 within 30 days of receiving a notice under clause (a) but have not voted against the proposed addition, alteration, improvement or change at the meeting. 1998, c. 19, s. 97 (3).

Approval of substantial change

(4) Despite subsection (3), the corporation shall not make a substantial addition, alteration, improvement to the common elements, a substantial change in the assets of the corporation or a substantial change in a service that the corporation provides to the owners unless the owners who own at least $66\frac{2}{3}$ per cent of the units of the corporation vote in favour of approving it. 1998, c. 19, s. 97 (4).

Meeting

(5) The vote shall be taken at a meeting duly called for the purpose of subsection (4). 1998, c. 19, s. 97 (5).

Meaning of substantial change

(6) For the purposes of subsection (4), an addition, alteration, improvement or change is substantial if,

(a) its estimated cost, based on its total cost, regardless of whether part of the cost is incurred before or after the current fiscal year, exceeds the lesser of,

- (i) 10 per cent of the annual budgeted common expenses for the current fiscal year, and
- (ii) the prescribed amount, if any; or

(b) the board elects to treat it as substantial. 1998, c. 19, s. 97 (6).

Cost of changes

(7) The cost of an addition, alteration, improvement or change that the corporation makes under this section shall form part of the common expenses. 1998, c. 19, s. 97 (7).

Changes made by owners

98. (1) An owner may make an addition, alteration or improvement to the common elements that is not contrary to this Act or the declaration if,

(a) the board, by resolution, has approved the proposed addition, alteration or improvement;

(b) the owner and the corporation have entered into an agreement that,

- (i) allocates the cost of the proposed addition, alteration or improvement between the corporation and the owner,
- (ii) sets out the respective duties and responsibilities, including the responsibilities for the cost of repair after damage, maintenance and insurance, of the corporation and the owner with respect to the proposed addition, alteration or improvement, and

(iii) sets out the other matters that the regulations made under this Act require;

(c) subject to subsection (2), the requirements of section 97 have been met in cases where that section would apply if the proposed addition, alteration or improvement were done by the corporation; and

(d) the corporation has included a copy of the agreement described in clause (b) in the notice that the corporation is required to send to the owners. 1998, c. 19, s. 98 (1).

No notice or approval

(2) Clauses (1) (c) and (d) do not apply if the proposed addition, alteration or improvement relates to a part of the common elements of which the owner has exclusive use and if the board is satisfied on the evidence that it may require that the proposed addition, alteration or improvement,

(a) will not have an adverse effect on units owned by other owners;

(b) will not give rise to any expense to the corporation;

(c) will not detract from the appearance of buildings on the property;

(d) will not affect the structural integrity of buildings on the property according to a certificate of an engineer, if the proposed addition, alteration or improvement involves a change to the structure of the buildings; and

(e) will not contravene the declaration or any prescribed requirements. 1998, c. 19, s. 98 (2).

When agreement effective

- (3) An agreement described in clause (1) (b) does not take effect until,
- (a) the conditions set out in clause (1) (a) and subsection (2) have been met or the conditions set out in clauses (1) (a), (c) and (d) have been met; and
- (b) the corporation has registered it against the title to the owner's unit. 1998, c. 19, s. 98 (3).

Lien for default under agreement

(4) The corporation may add the costs, charges, interest and expenses resulting from an owner's failure to comply with an agreement to the common expenses payable for the owner's unit and may specify a time for payment by the owner. 1998, c. 19, s. 98 (4).

Agreement binds unit

(5) An agreement binds the owner's unit and is enforceable against the owner's successors and assigns. 1998, c. 19, s. 98 (5).

INSURANCE

Property insurance

99. (1) The corporation shall obtain and maintain insurance, on its own behalf and on behalf of the owners, for damage to the units and common elements that is caused by major perils or the other perils that the declaration or the by-laws specify. 1998, c. 19, s. 99 (1).

Definition

(2) In subsection (1),

"major perils" means the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft or vehicles, vandalism or malicious acts. 1998, c. 19, s. 99 (2).

Exclusion ineffective

(3) An exclusion in the insurance required by this section is not effective with respect to damage resulting from faulty or improper material, workmanship or design that would be insured, but for the exclusion. 1998, c. 19, s. 99 (3).

Improvements not included

(4) The obligation to insure under subsection (1) does not include insurance for damage to improvements made to a unit. 1998, c. 19, s. 99 (4).

Determination of improvements

(5) For the purpose of this section, the question of what constitutes an improvement to a unit shall be determined by reference to a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 99 (5).

Standard unit

(6) A standard unit for the class of unit to which the unit belongs shall be,

- (a) the standard unit described in a by-law made under clause 56 (1) (h), if the board has made a by-law under that clause;
- (b) the standard unit described in the schedule mentioned in clause 43 (5) (h), if the board has not made a by-law under clause 56 (1) (h). 1998, c. 19, s. 99 (6).

Amount of recovery

(7) Subject to a reasonable deductible, the insurance required under this section shall cover the replacement cost of the property damaged by the perils to which the insurance applies. 1998, c. 19, s. 99 (7).

Breach of policy

(8) Despite anything in an insurance policy issued under this section, no act of any person shall be deemed to be a breach of the conditions of the policy if the act is prejudicial to the interests of the corporation or the owners. 1998, c. 19, s. 99 (8).

Termination

(9) An insurance policy issued under this section shall be deemed to include a clause that the insurer shall not terminate the insurance contract unless the insurer gives the corporation and the insurance trustee, if any, at least 60 days notice by registered mail. 1998, c. 19, s. 99 (9).

Proceeds

100. (1) Despite anything contained in an insurance trust agreement that the corporation has entered into with an insurance trustee, if the proceeds of an insurance policy issued under section 99 are less than 15 per cent of the replacement cost of the property covered by the policy, the insurer shall pay the proceeds to the corporation or the person whom the corporation specifies. 1998, c. 19, s. 100 (1).

Use of insurance proceeds

(2) Upon the proceeds being available, the corporation shall promptly use them for the repair or replacement of the damaged units and common elements, unless the owners have voted to terminate because of substantial damage in accordance with section 123. 1998, c. 19, s. 100 (2).

Payment from Ontario New Home Warranties Plan

(3) A corporation that receives a payment out of the guarantee fund under subsection 14 (3) or (4) of the *Ontario New Home Warranties Plan Act* for remedial work to the common elements shall promptly use the payment for the remedial work, unless,

- (a) the owners have voted to terminate because of substantial damage in accordance with section 123; or
- (b) the corporation has already completed and paid for the remedial work. 1998, c. 19, s. 100 (3).

Limitation, mortgage

(4) Despite any provision in a mortgage or subsection 6 (2) of the *Mortgages Act*, a mortgagee may not require that proceeds received under an insurance policy on the property or on a part of the property or a payment received out of the guarantee fund under subsection 14 (3) or (4) of the *Ontario New Home Warranties Plan Act* be applied towards the discharge of the mortgage; a requirement that contravenes this subsection is void. 1998, c. 19, s. 100 (4).

Double coverage

101. (1) Insurance that a corporation obtains and maintains under section 99 shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to the owner's unit or the owner's interest in the common elements and covering only to the extent that the insurance placed by the corporation is inapplicable, inadequate or ineffective. 1998, c. 19, s. 101 (1).

No reciprocal contribution

(2) Despite section 150 of the *Insurance Act*, an insurance policy issued under section 99 and any other insurance policy, except another policy under section 99, are not liable to be brought into contribution with each other. 1998, c. 19, s. 101 (2).

Other insurance

102. The corporation shall obtain and maintain,

- (a) insurance against its liability resulting from a breach of duty as occupier of the common elements or land that the corporation holds as an asset; and
- (b) insurance against its liability arising from the ownership, use or operation, by or on its behalf, of boilers, machinery, pressure vessels and motor vehicles. 1998, c. 19, s. 102.

Capacity to maintain insurance

103. (1) Nothing in this Act shall be construed to restrict the capacity of a corporation, an owner or any other person to obtain and maintain insurance in respect of an insurable interest. 1998, c. 19, s. 103 (1).

Same

(2) For the purposes of sections 99 and 102, the corporation shall be deemed to have an insurable interest in the units and common elements. 1998, c. 19, s. 103 (2).

Disclosure by insurer

104. An insurer under an insurance policy required by this Act shall provide the corporation with a certificate or memorandum of insurance declaring the coverage carried by the corporation on behalf of all owners. 1998, c. 19, s. 104.

Deductible

105. (1) Subject to subsection (2) and (3), if an insurance policy obtained by the corporation in accordance with this Act contains a deductible clause that limits the amount payable by the insurer, the portion of a loss that is excluded from coverage shall be a common expense. 1998, c. 19, s. 105 (1).

Owner's responsibility

(2) If an owner, a lessee of an owner or a person residing in the owner's unit with the permission or knowledge of the owner through an act or omission causes damage to the owner's unit, the amount that is the lesser of the cost of repairing the damage and the deductible limit of the insurance policy obtained by the corporation shall be added to the common expenses payable for the owner's unit. 1998, c. 19, s. 105 (2).

Same, by-law

(3) The corporation may pass a by-law to extend the circumstances in subsection (2) under which an amount shall be added to the common expenses payable for an owner's unit if the damage to the unit was not caused by an act or omission of the corporation or its directors, officers, agents or employees. 1998, c. 19, s. 105 (3).

Owner's insurable interest

(4) The amount payable by an owner under this section or as a result of a by-law passed under this section constitutes an insurable interest of the owner. 1998, c. 19, s. 105 (4).

Act prevails

106. If any provision of an insurance policy required by section 99 or 102 or any part of the *Insurance Act* conflicts with anything in this Act, the provisions of this Act apply. 1998, c. 19, s. 106.

AMENDMENTS TO THE DECLARATION AND DESCRIPTION

Amendments with owners' consent

107. (1) The corporation shall not amend the declaration or the description except in accordance with this section. 1998, c. 19, s. 107 (1).

Conditions

- (2) The corporation may amend the declaration or the description if,
- (a) the board, by resolution, has approved the proposed amendment;
 - (b) the declarant has consented to the proposed amendment in writing if,
 - (i) at the time the board approved the proposed amendment, the declarant had not transferred all of the units except for the part of the property described in subsection 22 (5), and
 - (ii) less than three years have elapsed from the later of the date of registration of the declaration and description and the date that the declarant first entered into an agreement of purchase and sale for a unit in the corporation;
 - (c) the board has held a meeting of owners in accordance with subsections (3) and (4);
 - (d) the owners of at least 90 per cent of the units at the time the board approved the proposed amendment have consented to it in writing, if it makes a change in a matter described in clause 7 (2) (c), (d) or (f) or 7 (4) (e);
 - (e) the owners of at least 80 per cent of the units at the time the board approved the proposed amendment have consented to it in writing, in all cases apart from a case described in clause (d); and
 - (f) the corporation has, in accordance with subsection 47 (8), sent a notice of the proposed amendment to all mortgagees whose names appeared in the record of the corporation maintained under subsection 47 (2) at the time the board approved the proposed amendment. 1998, c. 19, s. 107 (2).

Meeting of owners

(3) The board shall call a meeting of owners for the purpose of considering the proposed amendment. 1998, c. 19, s. 107 (3).

Notice of meeting

(4) The board shall give the owners a notice of the meeting which shall include a copy of the proposed amendment. 1998, c. 19, s. 107 (4).

Registration

(5) The corporation shall register a copy of an amendment made under this section but shall not register the copy until after the expiration of 30 days following the time at which it gave the notice described in clause (2) (f). 1998, c. 19, s. 107 (5).

Form of registration

(6) The registered copy of the amendment shall include a certificate, in the form prescribed by the Minister, made by the officers authorized to act on behalf of the corporation that certifies that the amendment complies with the requirements of this section. 1998, c. 19, s. 107 (6).

When amendment effective

(7) An amendment made under this section is ineffective until the copy of the amendment has been registered. 1998, c. 19, s. 107 (7).

Change of address for service

108. Despite section 107, the board may change the address for service or the mailing address of the corporation by registering a notice of change of address in the form prescribed by the Minister. 1998, c. 19, s. 108.

Court order

109. (1) The corporation or an owner may make an application to the Superior Court of Justice for an order to amend the declaration or description. 1998, c. 19, s. 109 (1); 2000, c. 26, Sched. B, s. 7 (7).

Notice of application

(2) The applicant shall give at least 15 days notice of an application to the corporation and to every owner and mortgagee who, on the 30th day before the application is made, is listed in the record of the corporation maintained under subsection 47 (2), but the applicant is not required to give notice to the applicant. 1998, c. 19, s. 109 (2).

Grounds for order

(3) The court may make an order to amend the declaration or description if satisfied that the amendment is necessary or desirable to correct an error or inconsistency that appears in the declaration or description or that arises out of the carrying out of the intent and purpose of the declaration or description. 1998, c. 19, s. 109 (3).

Registration

(4) An amendment under this section is ineffective until a certified copy of the order has been registered. 1998, c. 19, s. 109 (4).

Order of Director of Titles

110. (1) The corporation or an interested person may apply to the Director of Titles appointed under section 9 of the *Land Titles Act* for an order to amend the declaration or description to correct an error or inconsistency that is apparent on the face of the declaration or description, as the case may be. 1998, c. 19, s. 110 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "appointed under section 9 of the *Land Titles Act*". See: 2012, c. 8, Sched. 9, ss. 4, 6.

Notice of application

(2) The applicant shall give notice of the application in the form and manner that the Director of Titles directs to the corporation and to every owner and mortgagee listed in the record of the corporation maintained under subsection 47 (2) whose interest would be affected by the amendment, but the applicant is not required to give notice to the applicant. 1998, c. 19, s. 110 (2).

Grounds for order

(3) The Director of Titles shall make an order to amend the declaration or description if satisfied that the amendment will correct an error or inconsistency that is apparent on the face of the declaration or description, as the case may be. 1998, c. 19, s. 110 (3).

Registration

(4) An amendment under this section is ineffective until a certified copy of the order has been registered. 1998, c. 19, s. 110 (4).

TERMINATION OF AGREEMENTS

Management agreements

111. (1) Subject to subsection (2), a corporation may, by resolution of the board, terminate an agreement for the management of the property that it has entered into with a person before the owners elected a new board at a meeting held in accordance with subsection 43 (1). 1998, c. 19, s. 111 (1).

Notice

(2) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the corporation entered into the agreement. 1998, c. 19, s. 111 (2).

Other agreements

112. (1) Subject to subsection (4), a corporation may, by resolution of the board within 12 months following the election of a new board at a meeting held in accordance with subsection 43 (1), terminate an agreement mentioned in subsection (2) that the corporation has entered into with a person other than another corporation before the election of the new board. 1998, c. 19, s. 112 (1).

Application

(2) Subsection (1) applies to the following agreements:

1. An agreement for the provision of goods or services on a continuing basis.
2. An agreement for the provision of facilities to the corporation on other than a non-profit basis.
3. A lease of all or part of the common elements for business purposes. 1998, c. 19, s. 112 (2).

Non-application

(3) Subsection (1) does not apply to a telecommunications agreement within the meaning of section 22. 1998, c. 19, s. 112 (3).

Notice

(4) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the corporation entered into the agreement. 1998, c. 19, s. 112 (4).

Exception, easements

(5) Nothing in this section permits the termination of an easement created by an instrument in writing except in accordance with the instrument. 1998, c. 19, s. 112 (5).

Mutual use agreements

113. (1) If a corporation and a person have entered into an agreement for the mutual use, provision or maintenance or the cost-sharing of facilities or services before the owners elected a new board at a meeting held in accordance with subsection 43 (1), any party to the agreement may, within 12 months following the election, make an application to the Superior Court of Justice for an order under subsection (3). 1998, c. 19, s. 113 (1); 2000, c. 26, Sched. B, s. 7 (7).

Non-application

(2) Subsection (1) does not apply to a telecommunications agreement within the meaning of section 22. 1998, c. 19, s. 113 (2).

Court order

(3) The court may make an order amending or terminating the agreement or any of its provisions or may make any other order that the court deems necessary if it is satisfied that,

- (a) the disclosure statement did not clearly and adequately disclose the provisions of the agreement; and
- (b) the agreement or any of its provisions produces a result that is oppressive or unconscionably prejudicial to the corporation or any of the owners. 1998, c. 19, s. 113 (3).

Insurance trust agreements

114. Despite anything contained in an insurance trust agreement that a corporation has entered into with an insurance trustee and anything in the declaration, the corporation may terminate the agreement by giving at least 60 days notice in writing of the termination date to the trustee. 1998, c. 19, s. 114.

MISCELLANEOUS

Corporation's money

115. (1) A person who receives money on behalf of or for the benefit of the corporation, including money received from owners as contributions to the common expenses or the reserve fund, shall hold the money, together with interest and other proceeds earned from investing it, in trust for the performance by the corporation of its duties and obligations. 1998, c. 19, s. 115 (1).

Corporation's accounts

(2) A corporation shall maintain one or more accounts in its name designated as general accounts and one or more accounts in its name designated as reserve fund accounts. 1998, c. 19, s. 115 (2).

Location of accounts

(3) Each of the accounts shall be located in Ontario at a bank listed under Schedule I or II to the *Bank Act (Canada)*, a trust corporation, a loan corporation or a credit union authorized by law to receive money on deposit. 1998, c. 19, s. 115 (3); 2002, c. 8, Sched. I, s. 7 (2).

Deposit of money

(4) Subject to subsections (6) and (7), the person who receives money on behalf of or for the benefit of the corporation shall pay the money, together with interest and other proceeds earned from investing it, into,

- (a) a general account of the corporation, if the money was not received as contributions from owners to the reserve fund; or
- (b) a reserve fund account of the corporation, if the money was received as contributions from owners to the reserve fund. 1998, c. 19, s. 115 (4).

Definition

(5) In subsections (6) and (7),

“eligible security” means a bond, debenture, guaranteed investment certificate, deposit receipt, deposit note, certificate of deposit, term deposit or other similar instrument that,

- (a) is issued or guaranteed by the government of Canada or the government of any province of Canada,
- (b) is issued by an institution located in Ontario insured by the Canada Deposit Insurance Corporation or the Deposit Insurance Corporation of Ontario, or
- (c) is a security of a prescribed class. 1998, c. 19, s. 115 (5); 2009, c. 34, Sched. E, s. 1.

Investment

(6) The board may invest all or any part of the money in the corporation’s general accounts in eligible securities if,

- (a) they are convertible to cash within 90 days following a request by the board; and
- (b) they are,
 - (i) registered in the name of the corporation, or
 - (ii) held in a segregated account under the name of the corporation by a member of the Investment Dealers Association of Canada and insured by the Canadian Investor Protection Fund. 1998, c. 19, s. 115 (6).

Same, reserve fund accounts

(7) Subject to subsection (8), the board may invest all or any part of the money in the corporation’s reserve fund accounts in eligible securities if they are,

- (a) registered in the name of the corporation; or
- (b) held in a segregated account under the name of the corporation by a member of the Canadian Investment Dealers Association and insured by the Canadian Investor Protection Fund. 1998, c. 19, s. 115 (7).

Investment plan

(8) Before investing any part of the money in the corporation’s reserve fund accounts, the board shall develop an investment plan based on the anticipated cash requirements of the reserve fund as set out in the most recent reserve fund study. 1998, c. 19, s. 115 (8).

Records

(9) A person who receives money under subsection (1) shall keep records relating to the receipt and disposition of all money under this section and shall, upon reasonable notice and at all reasonable times, make the records available for examination by the corporation, an owner or a mortgagee. 1998, c. 19, s. 115 (9).

Use of common elements by owners

116. An owner may make reasonable use of the common elements subject to this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 116.

Dangerous activities

117. No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual. 1998, c. 19, s. 117.

Entry by canvassers

118. No corporation or employee or agent of a corporation shall restrict reasonable access to the property by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly or an office in a municipal government or school board if access is necessary for the purpose of canvassing or distributing election material. 1998, c. 19, s. 118.

Compliance with Act

119. (1) A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 119 (1).

Responsibility for occupier

(2) An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 119 (2).

Right against owner

(3) A corporation, an owner and every person having a registered mortgage against a unit and its appurtenant common interest have the right to require the owners and the occupiers of units to comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 119 (3).

Proposed unit

(4) Until the declarant registers a declaration and description and the by-laws and rules of the corporation come into force, an occupier of a proposed unit shall comply with this Act, the declaration and the by-laws and rules proposed by the declarant; the declarant shall take all reasonable steps to ensure that the occupier complies with this section. 1998, c. 19, s. 119 (4).

Right against occupier

(5) Until the declarant registers a declaration and description and the by-laws and rules of the corporation come into force, an occupier of a proposed unit has the right to require the occupiers of the other units in the proposed corporation to comply with this Act, the declaration and the by-laws and rules proposed by the declarant. 1998, c. 19, s. 119 (5).

PART VII AMALGAMATION

Amalgamation

120. (1) Subject to the regulations made under this Act, two or more leasehold condominium corporations or two or more freehold condominium corporations of the same type may amalgamate by registering a declaration and description amalgamating the corporations if,

- (a) the board of each amalgamating corporation has held a meeting in accordance with subsections (2) and (3);
- (b) the owners of at least 90 per cent of the units of each corporation as of the date of that corporation's meeting have, within 90 days of the meeting, consented in writing to the registration of the declaration and description; and
- (c) the corporations have complied with all prescribed requirements. 1998, c. 19, s. 120 (1).

Meeting of owners

(2) The board of each amalgamating corporation shall call a meeting of owners for the purpose of considering a declaration and description amalgamating the corporations. 1998, c. 19, s. 120 (2).

Notice of meeting

- (3) The board shall give the owners a notice of the meeting which shall include,
- (a) a copy of the proposed declaration and description of the amalgamated corporation and a copy of the proposed budget for the corporation's first year of operation;
 - (b) a copy of all proposed by-laws and rules of the amalgamated corporation;
 - (c) a certificate as to the status for each amalgamating corporation in the form prescribed by the Minister;

- (d) for each amalgamating corporation, the auditor's report on the last annual financial statements of the corporation, if it is not included in the certificate mentioned in clause (c); and
- (e) all additional statements and information that the regulations made under this Act require. 1998, c. 19, s. 120 (3).

Signing of declaration

(4) The declaration of an amalgamated corporation shall not be registered unless the officers of each amalgamating corporation who are duly authorized to sign on behalf of the corporation have signed the declaration. 1998, c. 19, s. 120 (4).

Part VIII not applicable

(5) Part VIII does not apply to an amalgamation carried out under this section but does apply to an amalgamated corporation after the registration of its declaration and description. 1998, c. 19, s. 120 (5).

Effect of registration

121. (1) On registration of a declaration and description for an amalgamated corporation,

- (a) the amalgamating corporations are amalgamated and continue as one corporation;
- (b) the units and common interests of the amalgamating corporations are continued as units and common interests in the amalgamated corporation;
- (c) all encumbrances, easements and leases that affected the units or common elements of the amalgamating corporations are continued as encumbrances, easements and leases respectively that affect the units or common elements, as the case may be, of the amalgamated corporation;
- (d) all declarations, descriptions, by-laws and rules of the amalgamating corporations cease to apply;
- (e) the directors of the amalgamating corporations constitute the first directors of the amalgamated corporation;
- (f) the proposed by-laws and rules mentioned in clause 120 (3) (b) shall be the by-laws and rules respectively of the amalgamated corporation until the corporation amends or replaces them;
- (g) the amalgamated corporation possesses all the assets, rights and privileges and is subject to all liabilities, including civil, criminal and quasi-criminal, and all contracts, agreements, warranties and debts of each of the amalgamating corporations;
- (h) a conviction against, or ruling, order or judgment in favour of or against an amalgamating corporation may be enforced by or against the amalgamated corporation; and
- (i) the amalgamated corporation shall be deemed to be the party plaintiff or the party defendant, as the case may be, in all civil actions commenced by or against an amalgamating corporation before the amalgamation becomes effective. 1998, c. 19, s. 121 (1).

First auditors

(2) Immediately following the registration of a declaration and description for an amalgamated corporation, the directors shall appoint one or more auditors who shall hold office until the close of the meeting of owners described in subsection (3). 1998, c. 19, s. 121 (2).

Subsequent directors

(3) The first directors of an amalgamated corporation shall hold office until the owners elect their successors at a meeting which the first directors shall call and hold within 60 days following the registration of the declaration and description for the corporation. 1998, c. 19, s. 121 (3).

Subsequent auditors

(4) At the meeting the owners shall, subject to section 60 with necessary modifications, appoint successors for the auditors mentioned in subsection (2). 1998, c. 19, s. 121 (4).

**PART VIII
TERMINATION**

Termination with consent

122. (1) A corporation shall register a notice terminating the government of the property by this Act if,

- (a) the owners of at least 80 per cent of the units, at the date of the vote, vote in favour of termination; and

- (b) at least 80 per cent of those persons who, at the date of the vote, have registered claims against the property, that were created after the registration of the declaration and description that made this Act applicable to the property, consent in writing to the termination. 1998, c. 19, s. 122 (1).

Notice of termination

(2) The notice of termination shall be in the form prescribed by the Minister, shall be signed by the authorized officers of the corporation and shall include a certificate stating that the persons described in clause (1) (b) have consented in writing to the termination. 1998, c. 19, s. 122 (2).

Termination upon substantial damage

123. (1) The registration of a notice under subsection (7) terminates the government of the property by this Act. 1998, c. 19, s. 123 (1).

Definition

(2) In this section, "substantial damage" means damage for which the cost of repair is estimated to equal or exceed 25 per cent of the replacement cost of all the buildings and structures located on the property. 1998, c. 19, s. 123 (2).

Estimates of damage

(3) If damage occurs to a building or a structure located on the property that, in the opinion of the board, may constitute substantial damage, the board shall have at least two persons, who shall have no affiliation with the board and who, in the opinion of the board, are qualified, make estimates of the damage within 30 days after the occurrence of the damage. 1998, c. 19, s. 123 (3).

Determination by board

(4) The board shall determine whether, based on the estimates, there has been substantial damage. 1998, c. 19, s. 123 (4).

Notice of determination

(5) If the board determines that there has been substantial damage, it shall give notice of its determination to the owners. 1998, c. 19, s. 123 (5).

Contents of notice

- (6) The notice shall specify that,
- (a) the owners have the right, in accordance with section 46 and within 30 days of receiving the notice, to requisition a meeting of owners; and
 - (b) the board is required to register a notice terminating the government of the property by this Act if the condition described in subsection (7) is met. 1998, c. 19, s. 123 (6).

Vote for termination

(7) The board shall register a notice terminating the government of the property by this Act if the owners of at least 80 per cent of the units, at the date of the vote, vote in favour of termination. 1998, c. 19, s. 123 (7).

Form of notice

(8) The notice shall be in the form prescribed by the Minister and shall be signed by the authorized officers of the corporation. 1998, c. 19, s. 123 (8).

Time of registration

(9) The board shall register the notice within 30 days of a vote in favour of termination under subsection (7). 1998, c. 19, s. 123 (9).

Repairs if no termination

(10) If there is no vote in favour of termination under subsection (7), the corporation shall, within a reasonable time, repair the damage to the building or structure located on the property. 1998, c. 19, s. 123 (10).

Termination upon sale of property

124. (1) If the corporation sells the property or a part of the common elements, this Act ceases to govern the property being sold. 1998, c. 19, s. 124 (1).

Authorization of sale

- (2) The corporation shall not sell the property or a part of the common elements unless,
- (a) the owners of at least 80 per cent of the units, at the date of the vote, vote in favour of the sale;
 - (b) at least 80 per cent of those persons who, at the date of the vote, have registered claims against the property being sold, that were created after the registration of the declaration and description that made this Act applicable to the property being sold, consent in writing to the sale; and
 - (c) if the sale is for only part of the common elements and includes common elements that are for the use of the owners of certain designated units and not all the owners, the owners of the designated units consent in writing to the sale. 1998, c. 19, s. 124 (2).

Conveyance

(3) When a sale takes place, the board shall deliver to the purchaser the following documents signed by the authorized officers of the corporation: a deed and a certificate in the form prescribed by the Minister stating that the persons who, under subsection (2), are required to vote in favour of the sale or consent in writing to the sale have done so. 1998, c. 19, s. 124 (3).

Proceeds

(4) Subject to subsection (5), the owners at the time of the registration of the deed shall share the net proceeds of the sale in the same proportions as their common interests. 1998, c. 19, s. 124 (4).

Same

(5) The portion of the proceeds of the sale that is attributable to a portion of the common elements that is for the use of the owners of certain designated units, and not all the owners, shall be divided among the owners of the designated units in the proportions in which their interests are affected. 1998, c. 19, s. 124 (5).

Right of dissenters

125. (1) A corporation that has made a sale under section 124 and every owner in the corporation shall be deemed to have made an agreement that an owner who has dissented on the vote authorizing the sale may, within 30 days of the vote, submit to mediation a dispute over the fair market value of the property or the part of the common elements that has been sold, determined as of the time of the sale. 1998, c. 19, s. 125 (1).

Application of s. 132

(2) If an owner submits a dispute to mediation, section 132 applies to the dispute with necessary modifications as if it were a disagreement under that section. 1998, c. 19, s. 125 (2).

Notice

(3) An owner who submits a dispute to mediation shall give the corporation notice of intention within 10 days after the vote authorizing the sale. 1998, c. 19, s. 125 (3).

Entitlement to amount

(4) An owner who serves a notice of intention is entitled to receive from the proceeds of the sale the amount the owner would have received if the sale price had been the fair market value as determined by the arbitration. 1998, c. 19, s. 125 (4).

Deficiency

(5) The corporation shall pay to each of the owners who served a notice of intention, the deficiency in the amount to which the owner is entitled if the proceeds of the sale are inadequate to pay the amount. 1998, c. 19, s. 125 (5).

Liability

(6) The owners other than those who dissented on the vote authorizing the sale are liable for the amount of the deficiency payments determined by the proportions of their common interests. 1998, c. 19, s. 125 (6).

Common expenses of other owners

(7) The corporation shall add the amount of the liability of each of the owners who voted in favour of the sale to the common expenses appurtenant to the units of those owners and may specify a time for payment by each of those owners. 1998, c. 19, s. 125 (7).

Expropriation

126. (1) Upon expropriation of the property or a part of the common elements under the *Expropriations Act*, this Act ceases to govern the property or the part of the common elements, as the case may be. 1998, c. 19, s. 126 (1).

Proceeds

(2) Subject to subsection (3), if part of the common elements is expropriated under the *Expropriations Act*, the owners shall share the proceeds in the same proportions as their common interests. 1998, c. 19, s. 126 (2).

Same

(3) The portion of the proceeds received on expropriation under the *Expropriations Act* that is attributable to a portion of the common elements that is for the use of the owners of certain designated units, and not all the owners, shall be divided among the owners of the designated units in the proportions in which their interests are affected. 1998, c. 19, s. 126 (3).

Effect of registration

127. (1) Upon registration of a notice of termination under section 122 or 123,

- (a) this Act ceases to govern the property;
- (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and the interests appurtenant to the land described in the description, that were created before the registration of the declaration and description that made this Act applicable to the land, are as effective as if the declaration and description had not been registered;
- (d) encumbrances against each unit and common interest, that were created after the registration of the declaration and description that made this Act applicable to the unit, are claims against the interests of the owner in the land and interests appurtenant to the land described in the description and have the same priority as they had before the registration of the notice of termination; and
- (e) all other claims against the property that were created after the registration of the declaration and description that made this Act applicable to the property are extinguished. 1998, c. 19, s. 127 (1).

Same, sale or expropriation

(2) Upon the registration of a deed and a certificate under section 124 or upon expropriation under section 126,

- (a) this Act ceases to govern the property being sold or expropriated, as the case may be;
- (b) claims against the land and interests appurtenant to the land, that were created before the registration of the declaration and description that made this Act applicable to the land, are as effective as if the declaration and description had not been registered; and
- (c) claims against the property being sold or expropriated, as the case may be, that were created after the registration of the declaration and description that made this Act applicable to that property, are extinguished. 1998, c. 19, s. 127 (2).

Termination by court

128. (1) A corporation, an owner, or a person having an encumbrance against a unit and common interest, may make an application to the Superior Court of Justice for an order terminating the government of the property by this Act. 1998, c. 19, s. 128 (1); 2000, c. 26, Sched. B, s. 7 (7).

Grounds for order

(2) The court may order that the government of the property by this Act be terminated if the court is of the opinion that the termination would be just and equitable, having regard to,

- (a) the scheme and intent of this Act;
- (b) the probability of unfairness to the owners if the court does not order termination;
- (c) the probability of confusion and uncertainty in the affairs of the corporation or of the owners if the court does not order termination; and
- (d) the best interests of the owners. 1998, c. 19, s. 128 (2).

Contents of order

(3) The court may include in the order all provisions that it considers appropriate in the circumstances. 1998, c. 19, s. 128 (3).

Registration of order

(4) If the court makes an order terminating the government of the property by this Act, the applicant shall register the order. 1998, c. 19, s. 128 (4).

Distribution of assets

129. When the owners and the property cease to be governed by this Act,

- (a) the assets of the corporation shall be used to pay all claims for the payment of money against the corporation; and
- (b) the remainder of the assets of the corporation shall be distributed among the owners in the same proportions as the proportions of their common interests. 1998, c. 19, s. 129.

**PART IX
ENFORCEMENT**

Inspector

130. (1) Upon application by the corporation, a lessor of a leasehold condominium corporation, an owner or a mortgagee of a unit, the Superior Court of Justice may make an order appointing an inspector to,

- (a) investigate the items that the declarant is required to give to the board under subsections 43 (4), (5) and (7);
- (b) investigate the corporation's records mentioned in subsection 55 (1);
- (c) investigate the affairs of a person mentioned in subsection 115 (1); or
- (d) conduct an audit of the accounts and records mentioned in section 43, 55 or 115. 1998, c. 19, s. 130 (1); 2000, c. 26, Sched. B, s. 7 (7).

Grounds for order

(2) The court may make the order if it is satisfied that the application is made in good faith and that the order is in the best interests of the applicant. 1998, c. 19, s. 130 (2).

Application of *Public Inquiries Act, 2009*

(3) Those provisions of section 33 of the *Public Inquiries Act, 2009* that the order states apply to the inspector's investigation or audit. 2009, c. 33, Sched. 6, s. 48.

Contents of order

(4) In the order, the court,

- (a) shall require the inspector to make a written report within a specified time to the applicant for the order and to the corporation on the activities that the order requires the inspector to perform; and
- (b) may make an order as to the costs of the investigation or audit or any other matter as it deems proper. 1998, c. 19, s. 130 (4).

Summary of report

(5) The board shall send a summary of the report to the owners. 1998, c. 19, s. 130 (5).

Administrator

131. (1) Upon application by the corporation, a lessor of a leasehold condominium corporation, an owner or a mortgagee of a unit, the Superior Court of Justice may make an order appointing an administrator for a corporation under this Act if at least 120 days have passed since a turn-over meeting has been held under section 43. 1998, c. 19, s. 131 (1); 2000, c. 26, Sched. B, s. 7 (7).

Grounds for order

(2) The court may make the order if the court is of the opinion that it would be just or convenient, having regard to the scheme and intent of this Act and the best interests of the owners. 1998, c. 19, s. 131 (2).

Contents of order

(3) The order shall,

- (a) specify the powers of the administrator;
- (b) state which powers and duties, if any, of the board shall be transferred to the administrator; and
- (c) contain the directions and impose the terms that the court considers just. 1998, c. 19, s. 131 (3).

Application for direction

(4) The administrator may apply to the court for the opinion, advice or direction of the court on any question regarding the management or administration of the corporation. 1998, c. 19, s. 131 (4).

Mediation and arbitration

132. (1) Every agreement mentioned in subsection (2) shall be deemed to contain a provision to submit a disagreement between the parties with respect to the agreement to,

- (a) mediation by a person selected by the parties unless the parties have previously submitted the disagreement to mediation; and
- (b) unless a mediator has obtained a settlement between the parties with respect to the disagreement, arbitration under the *Arbitration Act, 1991*,
 - (i) 60 days after the parties submit the disagreement to mediation, if the parties have not selected a mediator under clause (a), or
 - (ii) 30 days after the mediator selected under clause (a) delivers a notice stating that the mediation has failed. 1998, c. 19, s. 132 (1).

Application

(2) Subsection (1) applies to the following agreements:

1. An agreement between a declarant and a corporation.
2. An agreement between two or more corporations.
3. An agreement described in clause 98 (1) (b) between a corporation and an owner.
4. An agreement between a corporation and a person for the management of the property. 1998, c. 19, s. 132 (2).

Disagreements on budget statement

(3) The declarant and the board shall be deemed to have agreed in writing to submit a disagreement between the parties with respect to the budget statement described in subsection 72 (6) or the obligations of the declarant under section 75 to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively. 1998, c. 19, s. 132 (3).

Disagreements between corporation and owners

(4) Every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively. 1998, c. 19, s. 132 (4).

Duty of mediator

(5) A mediator appointed under clause (1) (a) shall confer with the parties and endeavour to obtain a settlement with respect to the disagreement submitted to mediation. 1998, c. 19, s. 132 (5).

Fees and expenses

- (6) Each party shall pay the share of the mediator's fees and expenses that,
- (a) the settlement specifies, if a settlement is obtained; or
 - (b) the mediator specifies in the notice stating that the mediation has failed, if the mediation fails. 1998, c. 19, s. 132 (6).

Record of settlement

(7) Upon obtaining a settlement between the parties with respect to the disagreement submitted to mediation, the mediator shall make a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation. 1998, c. 19, s. 132 (7).

False, misleading statements

133. (1) A declarant shall not, in a statement or information that the declarant is required to provide under this Act,

- (a) make a material statement or provide material information that is false, deceptive or misleading; or
- (b) omit a material statement or material information that the declarant is required to provide. 1998, c. 19, s. 133 (1).

Right to damages

(2) A corporation or an owner may make an application to the Superior Court of Justice to recover damages from a declarant for any loss sustained as a result of relying on a statement or on information that the declarant is required to provide under this Act if the statement or information,

- (a) contains a material statement or material information that is false, deceptive or misleading; or
- (b) does not contain a material statement or material information that the declarant is required to provide. 1998, c. 19, s. 133 (2); 2000, c. 26, Sched. B, s. 7 (7).

Compliance order

134. (1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement. 1998, c. 19, s. 134 (1); 2000, c. 26, Sched. B, s. 7 (7).

Pre-condition for application

(2) If the mediation and arbitration processes described in section 132 are available, a person is not entitled to apply for an order under subsection (1) until the person has failed to obtain compliance through using those processes. 1998, c. 19, s. 134 (2).

Contents of order

- (3) On an application, the court may, subject to subsection (4),
 - (a) grant the order applied for;
 - (b) require the persons named in the order to pay,
 - (i) the damages incurred by the applicant as a result of the acts of non-compliance, and
 - (ii) the costs incurred by the applicant in obtaining the order; or
 - (c) grant such other relief as is fair and equitable in the circumstances. 1998, c. 19, s. 134 (3).

Order terminating lease

(4) The court shall not, under subsection (3), grant an order terminating a lease of a unit for residential purposes unless the court is satisfied that,

- (a) the lessee is in contravention of an order that has been made under subsection (3); or
- (b) the lessee has received a notice described in subsection 87 (1) and has not paid the amount required by that subsection. 1998, c. 19, s. 134 (4).

Addition to common expenses

(5) If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit and the corporation may specify a time for payment by the owner of the unit. 1998, c. 19, s. 134 (5).

Oppression remedy

135. (1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section. 1998, c. 19, s. 135 (1); 2000, c. 26, Sched. B, s. 7 (7).

Grounds for order

(2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter. 1998, c. 19, s. 135 (2).

Contents of order

- (3) On an application, the judge may make any order the judge deems proper including,
 - (a) an order prohibiting the conduct referred to in the application; and
 - (b) an order requiring the payment of compensation. 1998, c. 19, s. 135 (3).

Other remedies

136. Unless this Act specifically provides the contrary, nothing in this Act restricts the remedies otherwise available to a person for the failure of another to perform a duty imposed by this Act. 1998, c. 19, s. 136.

Offences

137. (1) Every corporation under this Act or any other Act and every other person who knowingly contravenes subsection 43 (1), (3), (4), (5), (7), 55 (1) or 72 (1), section 81, subsection 115 (1), (2), (3), (4) or (9), section 118, subsection 133 (1), section 143, subsection 147 (1), (3), 152 (1), (2) or 161 (2) or section 169 is guilty of an offence and on conviction is liable to a fine of,

- (a) not more than \$100,000, if the person is a corporation within the meaning of this Act or any other Act; or
- (b) not more than \$25,000, if the person is not a corporation within the meaning of this Act or any other Act. 1998, c. 19, s. 137 (1).

Directors and officers

(2) It is an offence for a director or officer of a corporation within the meaning of this Act or any other Act to knowingly cause, authorize, permit, participate in or acquiesce in the commission by the corporation of an offence mentioned in subsection (1). 1998, c. 19, s. 137 (2).

Limitation

(3) No proceeding under this section shall be commenced after the second anniversary of the day on which the facts upon which the proceeding is based first came to the knowledge of the Director designated under the *Ministry of Consumer and Business Services Act*. 2006, c. 34, s. 7.

Compliance order

(4) The court hearing the proceeding may make an order requiring a person convicted of an offence to comply with the provisions of the Act that the person has contravened, if the court has competent jurisdiction to make the order. 1998, c. 19, s. 137 (4).

PART X COMMON ELEMENTS CONDOMINIUM CORPORATIONS

Creation

138. (1) Subject to the regulations made under this Act, a declarant may register a declaration and description that create common elements but do not divide the land into units. 1998, c. 19, s. 138 (1).

Type

(2) The type of corporation created by the registration of a declaration and description under subsection (1) shall be known as a common elements condominium corporation. 1998, c. 19, s. 138 (2).

Requirements for registration

(3) A declaration and description for a common elements condominium corporation shall not be registered unless the registration would create a freehold condominium corporation that is not a vacant land condominium corporation or, except as provided in the regulations made under this Act, a phased condominium corporation. 1998, c. 19, s. 138 (3).

Application

(4) Subject to this Part, Parts I to IX and XIV apply with necessary modifications to a common elements condominium corporation, except that,

- (a) references to a unit or a proposed unit shall be deemed to be references to a common interest in the corporation or a proposed common interest in the corporation, respectively;
- (b) references to a mortgagee of a unit shall be deemed to be references to a mortgagee of a common interest appurtenant to an owner's parcel of land mentioned in subsection 139 (1); and
- (c) references to a common interest appurtenant to a unit shall be deemed to be references to a common interest appurtenant to an owner's parcel of land mentioned in subsection 139 (1). 1998, c. 19, s. 138 (4).

Other corporations

(5) This Part does not apply to a corporation that is not a common elements condominium corporation. 1998, c. 19, s. 138 (5).

Owners' land

139. (1) A declaration for a common elements condominium corporation shall not be registered unless each of the owners of a common interest in the corporation,

- (a) also owns the freehold estate in a parcel of land,
 - (i) that is not included in the land described in the description,
 - (ii) that, subject to the regulations made under this Act, is situated within the boundaries of the land titles and registry divisions of the land registry office in which the description of the corporation is registered, and
 - (iii) to which the *Land Titles Act* applies or for which a certificate of title has been registered under the *Certification of Titles Act* as that Act read immediately before subsection 2 (1) of Schedule 17 to the *Good Government Act, 2009* came into force; and
- (b) has signed a certificate in a form prescribed by the Minister stating the owner consents to the registration of the declaration and the notice described in subclause (2) (b) (i). 1998, c. 19, s. 139 (1); 2009, c. 33, Sched. 17, s. 4.

Non-severable from common interest

- (2) Upon the registration of a declaration and description for a common elements condominium corporation,
 - (a) the common interest of an owner in the corporation attaches to the owner's parcel of land; and
 - (b) the declarant shall register against each owner's parcel of land,
 - (i) a notice in the form prescribed by the Minister that sets out the information contained in clause (a), and
 - (ii) a copy of the certificate described in clause (1) (b). 1998, c. 19, s. 139 (2).

Division of parcel

(3) Subject to the regulations made under this Act, if an owner's parcel of land is divided into two or more new parcels, the owners of the new parcels are joint owners of the common interest attached to the original parcel. 1998, c. 19, s. 139 (3).

Common interest preserved

(4) Despite any other Act, upon the sale of the parcel of land of an owner in a common elements condominium corporation or the enforcement of an encumbrance registered against the parcel, the common interest of the owner in the corporation is not terminated or severed from the parcel, but continues to be attached to the parcel. 1998, c. 19, s. 139 (4).

Lien

(5) If an owner defaults in the obligation to contribute to the common expenses of a common elements condominium corporation, the corporation has a lien against the owner's parcel of land. 1998, c. 19, s. 139 (5).

Same

- (6) The lien is a lien for the purposes of sections 85 and 86. 1998, c. 19, s. 139 (6).

Priority of lien

(7) Despite section 86, the lien does not have priority over an encumbrance registered against an owner's parcel of land before the common interest of the owner attached to it unless the encumbrancer agrees in writing otherwise. 1998, c. 19, s. 139 (7).

Contents of declaration

140. In addition to the requirements of subsection 7 (2), a declaration for a common elements condominium corporation shall contain,

- (a) a statement that the common elements are intended for the use and enjoyment of the owners;
- (b) a legal description of the parcels of land mentioned in subsection 139 (1); and
- (c) all other material that the regulations made under this Act require. 1998, c. 19, s. 140.

Contents of description

141. Clauses 8 (1) (c), (d), (f) and 8 (3) (b) do not apply to a description for a common elements condominium corporation. 1998, c. 19, s. 141.

Subdivision control

142. Section 50 of the *Planning Act* does not apply in respect of dealings with common interests in a common elements condominium corporation. 1998, c. 19, s. 142.

Disclosure statement

143. In addition to the requirements of subsection 72 (3), a disclosure statement for a common interest in a common elements condominium corporation shall contain,

- (a) a statement that the common interest attaches to the owner's parcel of land described in the declaration of the corporation and cannot be severed from the parcel upon the sale of the parcel or the enforcement of an encumbrance registered against the parcel; and
- (b) all other material that the regulations made under this Act require. 1998, c. 19, s. 143.

Repair after damage and insurance

144. (1) Sections 89 and 90 and clauses 91 (a) and (d) do not apply to a common elements condominium corporation. 1998, c. 19, s. 144 (1).

Repair after damage and maintenance

(2) Subject to clauses 91 (b) and (c) and section 123, the corporation shall repair and replace the common elements after damage or failure and shall maintain them. 1998, c. 19, s. 144 (2).

Insurance

(3) References to a unit in sections 99 to 105 shall be deemed not to apply to a common elements condominium corporation. 1998, c. 19, s. 144 (3).

PART XI PHASED CONDOMINIUM CORPORATIONS

Type of corporation

145. (1) Subject to the regulations made under this Act, the declarant may create additional units or common elements in a corporation in accordance with this Part after the registration of the declaration and description if,

- (a) the corporation is a freehold condominium corporation;
- (b) except as provided in the regulations made under this Act, the corporation is not a vacant land condominium corporation or a common elements condominium corporation;
- (c) the declaration indicates that the corporation is a phased condominium corporation;
- (d) the description contains a legal description of the land that will be the servient tenement within the meaning of section 151; and
- (e) the board has been elected at a meeting of owners held at a time when the declarant did not own a majority of the units. 1998, c. 19, s. 145 (1).

Type of corporation

(2) A corporation that meets the criteria described in subsection (1) shall be known as a phased condominium corporation. 1998, c. 19, s. 145 (2).

Definition

(3) In this Part,

"phase" means the additional units and common elements in a phased condominium corporation that are created in accordance with this Part upon the registration of an amendment to both the declaration and description. 1998, c. 19, s. 145 (3).

Application

(4) Subject to this Part, Parts I to IX and XIV apply with necessary modifications to a phased condominium corporation. 1998, c. 19, s. 145 (4).

Same

(5) For the purposes of subsection (4), a reference to the registration of the declaration and description in section 13, subsection 14 (1), 22 (4), 56 (11), 58 (9), 78 (1), 80 (6), 122 (1) or (2), 124 (2) or (3), 127 (1) or (2) shall be deemed, if applicable, to be a reference to the registration of the amendments to the declaration and description required for creating a phase. 1998, c. 19, s. 145 (5).

Other corporations

(6) This Part does not apply to a corporation that is not a phased condominium corporation. 1998, c. 19, s. 145 (6).

Creation of phase

146. (1) A phase that contains units may be created only in the blocks of numbers of units, during the time periods and in accordance with the requirements that are prescribed. 1998, c. 19, s. 146 (1).

Phase containing common elements

(2) A phase that contains common elements may be created only during the time periods and in accordance with the requirements that are prescribed. 1998, c. 19, s. 146 (2).

Method of creation

(3) To create a phase, the declarant shall register an amendment to both the declaration and description. 1998, c. 19, s. 146 (3).

Amendment to declaration

(4) The amendment to the declaration required for creating a phase shall include,

- (a) the consent of every person having a registered mortgage against the land included in the phase or interests appurtenant to the land, as the land and the interests are described in the amendment to the description required for creating the phase;
- (b) a statement of the proportions, expressed in percentages, of the common interests appurtenant to the units in the corporation after the creation of the phase;
- (c) a statement of the proportions, expressed in percentages allocated to the units in the corporation, in which the owners after the creation of the phase are to contribute to the common expenses;
- (d) a specification of all parts of the common elements contained in the phase that are to be used by the owners of one or more designated units and not by all the owners;
- (e) a statement of all conditions that the approval authority, in approving or exempting under section 9 the amendment to the description required for creating the phase, requires the amendment to the declaration to mention; and
- (f) all other material that the regulations made under this Act require. 1998, c. 19, s. 146 (4).

Amendment to description

(5) The amendment to the description required for creating a phase shall include,

- (a) the material mentioned in subsection 8 (1) prepared with respect to the phase;
- (b) a legal description of the land that will be the servient tenement within the meaning of section 151; and
- (c) all other material that the regulations made under this Act require. 1998, c. 19, s. 146 (5).

Same

(6) Subsection 8 (2) and clause 8 (3) (b) apply with necessary modifications to the amendment. 1998, c. 19, s. 146 (6).

Consent of owners not required

(7) Section 107 does not apply to amendments to the declaration that comply with subsection (4) or to amendments to the description that comply with subsections (5) and (6). 1998, c. 19, s. 146 (7).

Completion of buildings

(8) The amendments to the declaration and description required for creating a phase shall not be registered unless all facilities and services have been installed or provided as the municipality in which the land of the corporation is situated, or the Minister of Municipal Affairs and Housing if the land is not situated in a municipality, determines are necessary to ensure the independent operation of the corporation if no subsequent phases are created. 1998, c. 19, s. 146 (8).

Security

(9) Despite subsection (8), a declarant may register the amendments to the declaration and description required for creating a phase, even though certain facilities and services have not been installed or provided, if the municipality or the Minister of Municipal Affairs and Housing, as the case may be, agrees that the declarant provide to a specified person a bond or other security that is sufficient to ensure the installation or provision of the facilities and services. 1998, c. 19, s. 146 (9).

Partial release

(10) The person holding the bond or other security may provide a partial release of it to the declarant with the consent of the municipality or the Minister of Municipal Affairs and Housing, as the case may be. 1998, c. 19, s. 146 (10).

Full release

- (11) The person holding the bond or other security shall not release it in full until,
- (a) all the facilities and services covered by the bond, or other security have been installed or provided in accordance with the regulations made under this Act; and
 - (b) the municipality or the Minister of Municipal Affairs and Housing, as the case may be, consents. 1998, c. 19, s. 146 (11).

Disclosure statement

147. (1) In addition to the requirements of subsection 72 (3), a disclosure statement for a unit or a proposed unit in a phased condominium corporation shall contain,

- (a) a statement whether the declarant intends to create one or more phases after the creation of the unit or proposed unit;
- (b) a statement that the declarant is not required to create a phase after the creation of the unit or proposed unit;
- (c) a statement that sets out the projected year of registration of the amendments to the declaration and description required for creating each phase that the declarant intends to create after the creation of the unit or proposed unit;
- (d) a statement that sets out, for each phase that the declarant intends to create after the creation of the unit or proposed unit,
 - (i) the approximate number of the units included in the phase and a legal description of the land included in the phase,
 - (ii) the approximate location of the buildings and structures to be contained in the phase and a description of the facilities and services to be contained in the phase,
 - (iii) a statement of the proportions, expressed in percentages, of the common interests and common expenses attributable to the units after the creation of the phase,
 - (iv) a statement of the facilities and services that the owners will share after the creation of the phase, and
 - (v) a statement that there are no representations with respect to the quality of materials or appearance of buildings other than those specifically set out as representations in the disclosure statement; and
- (e) all other material that the regulations made under this Act require. 1998, c. 19, s. 147 (1).

Not material changes

(2) A change in the matters described in subclause (1) (d) (i) and a change in the matters described in subclause (1) (d) (iii) if it is the result only of a change in the number of units included in the phase shall be deemed not to be a material change within the meaning of section 74. 1998, c. 19, s. 147 (2).

No merger of statements

(3) The statements described in clause (1) (d) and made by a declarant in a disclosure statement with respect to a phase that is created after the creation of the unit or proposed unit to which the disclosure statement related are enforceable against the declarant and shall be deemed not to merge by operation of law when a deed that is in registerable form is delivered to the purchaser of the unit or proposed unit. 1998, c. 19, s. 147 (3).

Obligations for phase

- (4) If a unit or proposed unit is part of a phase,
- (a) a reference to the registration of the declaration and description in subsection 72 (3) or (6), 74 (2) or 75 (1) shall be deemed to be a reference to the registration of the amendments to the declaration and description required for creating the phase; and
 - (b) the reference in subsection 75 (2) to the termination of an agreement under section 111 or 112 shall be deemed to be a reference to the termination of an agreement under section 111 or 112 that affects the property contained in the phase. 1998, c. 19, s. 147 (4).

Copy of disclosure statement

(5) Within 15 days of registering the amendments to the declaration and description required for creating a phase, the declarant shall send to the corporation a copy of the most current disclosure statement delivered to the purchasers of units in the phase. 1998, c. 19, s. 147 (5).

Status certificate

148. In addition to the requirements of subsection 76 (1), a status certificate for a unit in a phased condominium corporation shall contain a copy of the disclosure statement that the corporation has received from the declarant under subsection 147 (5) with respect to the phase that contains the unit unless the declarant,

- (a) has completed all phases described in the disclosure statement; and
- (b) no longer owns any of the units in the phases except for the part of the property designed to control, facilitate or provide telecommunications to, from or within the property. 1998, c. 19, s. 148.

Corporation's remedy

149. (1) The declarant shall not register the amendments to the declaration and description required for creating a phase until at least 60 days after delivering to the corporation,

- (a) a copy of the disclosure statement delivered to a purchaser of a unit in the corporation most recently before the registration of the declaration and description;
- (b) a copy of the proposed amendments to the declaration and description required for creating the phase; and
- (c) a statement specifying all differences between the proposed amendments to the declaration and description required for creating the phase and the following matters with respect to the phase that were described in the disclosure statement mentioned in clause (a):
 - 1. The matters described in subclauses 147 (1) (d) (ii) and (iv).
 - 2. The matters described in subclause 147 (1) (d) (iii) if they differ from the proposed amendments to the declaration and description required for creating the phase for a reason other than a change in the number of units included in the phase. 1998, c. 19, s. 149 (1).

Application for injunction

(2) Before the earlier of the registration date of the proposed amendments to the declaration and description required for creating a phase and 60 days after receiving the documents described in clauses (1) (a), (b) and (c), the corporation may make an application to the Superior Court of Justice for an injunction to prevent the registration if any of the differences described in clause (1) (c) are material and detrimentally affect the corporation or the use and enjoyment of the property by the owners. 1998, c. 19, s. 149 (2); 2000, c. 26, Sched. B, s. 7 (7).

Grounds for injunction

(3) If the court is satisfied that the grounds for the application exist, it may grant the injunction or award damages to the corporation. 1998, c. 19, s. 149 (3).

Contents of order

(4) The court may include in the order all provisions that it considers appropriate in the circumstances. 1998, c. 19, s. 149 (4).

Restriction on declarant

(5) If the corporation makes an application for an injunction under subsection (2), the declarant is not entitled to register a declaration and description to create a corporation on the land to be included in the phase, instead of registering the amendments required for creating the phase, unless 120 days have passed after the court has made a final disposition of the application for the injunction. 1998, c. 19, s. 149 (5).

Remedy of purchasers

150. (1) Within 15 days of registering the amendments to the declaration and description required for creating a phase, the declarant shall send a copy of the amendments to the corporation and the owners. 1998, c. 19, s. 150 (1).

Damages from declarant

(2) A person who purchased a unit or proposed unit in the corporation before the registration of the amendments to the declaration and description required for creating a phase is entitled to recover damages from the declarant for a difference between the following matters disclosed in the disclosure statement delivered to the person and the registered amendments if the difference is material and detrimentally affects the use and enjoyment of the person's unit:

1. The matters described in subclauses 147 (1) (d) (ii) and (iv).
2. The matters described in subclause 147 (1) (d) (iii) if they differ from the registered amendments for a reason other than a change in the number of units included in the phase. 1998, c. 19, s. 150 (2).

Court order

(3) Upon application by the person, the Superior Court of Justice may make an order requiring the declarant to pay to the person the damages to which the person is entitled under subsection (2). 1998, c. 19, s. 150 (3); 2000, c. 26, Sched. B, s. 7 (7).

Easements

151. (1) Upon registration of a declaration and description for a phased condominium corporation or the amendments to the declaration and description required for creating a phase, the following easements are created, where necessary, for the benefit of the units and common elements:

1. An easement for the provision of services over the servient tenement.
2. An easement for support from the servient tenement.
3. An easement for access to and for the installation and maintenance of the services and facilities that the corporation is entitled to use over the servient tenement.
4. An easement for access to public roads over the servient tenement. 1998, c. 19, s. 151 (1).

Definition

(2) In subsection (1),

“servient tenement” means the land owned by the declarant that is not included in the phase, including the buildings and structures on the land. 1998, c. 19, s. 151 (2).

Turn-over obligations

152. (1) In addition to the items mentioned in subsection 43 (4), the declarant shall give to the board at the first meeting held under section 43,

- (a) a copy of the statements described in subsection 147 (1); and
- (b) all other material that the regulations made under this Act require. 1998, c. 19, s. 152 (1).

Obligation upon creation of phase

(2) Upon the registration of the amendments to the declaration and description required for creating a phase, the declarant shall turn over to the board all materials mentioned in subsections (1) and 43 (4) and clauses 43 (5) (a) to (h) and (l) and (m) that relate to the phase and that the declarant has not previously turned over to the board. 1998, c. 19, s. 152 (2).

Non-application of s. 43

(3) Subsections 43 (4) and (5) do not apply to the declarant if the board is required to hold a meeting of owners under section 43 after the declarant has turned over to the board the materials mentioned in subsection (2). 1998, c. 19, s. 152 (3).

Application

(4) The corporation may make an application to the Superior Court of Justice for an order under subsection (5). 1998, c. 19, s. 152 (4); 2000, c. 26, Sched. B, s. 7 (7).

Court order

(5) If the court is satisfied that the declarant is required to comply with subsection (2) and has not done so without reasonable excuse, the court,

- (a) shall order that the declarant pay damages to the corporation for the loss it incurred as a result of the declarant's acts of non-compliance with subsection (2);
- (b) shall order that the declarant pay the corporation's costs of the application;
- (c) may order the declarant to pay to the corporation an additional amount not to exceed \$10,000; and
- (d) may order the declarant to comply with subsection (2). 1998, c. 19, s. 152 (5).

Election of directors

(6) If, 30 days after the registration of the amendments to the declaration and description required for creating a phase, the declarant owns a majority of the units in the corporation, the board shall, at the request of the declarant, call a meeting of owners to elect a new board which shall hold office until a board is elected as required by subsection 43 (1). 1998, c. 19, s. 152 (6).

Corporation's obligations for phase

153. (1) If the declarant registers the amendments to the declaration and description required for creating a phase and the phase contains one or more units for residential purposes, the board shall have a performance audit of the common elements contained in the phase conducted on behalf of the corporation. 1998, c. 19, s. 153 (1).

Application of s. 44

(2) Section 44 applies to the performance audit, except that,

- (a) references in that section to the registration of the declaration and description shall be deemed to be references to the registration of the amendments; and
- (b) references in that section to the common elements shall be deemed to be references to the common elements contained in the phase. 1998, c. 19, s. 153 (2).

Financial statements

(3) Within 90 days of the registration of the amendments to the declaration and description required for creating a phase, the corporation shall have the financial statements required by subsection 66 (2) prepared and sections 66 to 71 apply to them. 1998, c. 19, s. 153 (3).

Reserve fund study

(4) Within the prescribed time following the registration of the amendments to the declaration and description required for creating a phase, the corporation shall conduct a reserve fund study in accordance with section 94 with respect to the phase. 1998, c. 19, s. 153 (4).

Termination of agreements

154. (1) Subject to subsection (2), after the registration of the amendments to the declaration and description required for creating a phase, a corporation may, by resolution of the board, terminate an agreement for the management of the property contained in the phase that the declarant entered into on behalf of the corporation before the registration of the amendments. 1998, c. 19, s. 154 (1).

Notice

(2) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the declarant entered into the agreement. 1998, c. 19, s. 154 (2).

Other agreements

(3) Subject to subsection (4) and subsection 112 (5), within 12 months following the first election of the board under section 43 after the registration of the amendments to the declaration and description required for creating a phase, the corporation may, by resolution of the board, terminate an agreement described in subsection 112 (2), that the declarant has entered into on behalf of the corporation before the registration of the amendments and that affects the property contained in the phase. 1998, c. 19, s. 154 (3).

Notice

(4) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the declarant entered into the agreement. 1998, c. 19, s. 154 (4).

Mutual use agreements

(5) If a declarant on behalf of a corporation has entered into an agreement for the mutual use, provision or maintenance or the cost-sharing of facilities or services before the registration of the amendments to the declaration and description required for creating a phase, and the agreement affects the property contained in the phase, any party to the agreement may, within 12 months following the first election of the board under section 43 after the registration of the amendments, make an application to the Superior Court of Justice for an order under subsection (6). 1998, c. 19, s. 154 (5); 2000, c. 26, Sched. B, s. 7 (7).

Court order

(6) The court may make an order described in subsection 113 (3) if the requirements of that subsection are met. 1998, c. 19, s. 154 (6).

PART XII
VACANT LAND CONDOMINIUM CORPORATIONS

Creation

155. (1) Subject to the regulations made under this Act, a declarant may register a declaration and description that create a corporation in which, at the time of the registration,

- (a) one or more units are not part of a building or structure and do not include any part of a building or structure; and
- (b) none of the units are located above or below any other unit. 1998, c. 19, s. 155 (1).

Type of corporation

(2) The type of corporation created by the registration of declaration and description under subsection (1) shall be known as a vacant land condominium corporation. 1998, c. 19, s. 155 (2).

Requirements for registration

(3) A declaration and description for a vacant land condominium corporation shall not be registered unless the registration would create a freehold condominium corporation that is not a common elements condominium corporation or, except as provided in the regulations made under this Act, a phased condominium corporation. 1998, c. 19, s. 155 (3).

Application

(4) Subject to this Part, Parts I to IX and XIV apply with necessary modifications to a vacant land condominium corporation. 1998, c. 19, s. 155 (4).

Other corporations

(5) This Part does not apply to a corporation that is not a vacant land condominium corporation. 1998, c. 19, s. 155 (5).

Contents of declaration

156. (1) If a unit in a vacant land condominium corporation is to include a building or structure constructed after the registration of the declaration and description, the declaration may contain restrictions with respect to,

- (a) the size, location, construction standards, quality of materials and appearance of the building or structure;
- (b) architectural standards and construction design standards of the building or structure;
- (c) the time of commencement and completion of construction of the building or structure; and
- (d) the minimum maintenance requirements for the building or structure. 1998, c. 19, s. 156 (1).

Permitted restrictions

(2) A restriction contained in the declaration shall be consistent with the conditions imposed by the approval authority in approving or exempting the description under section 9. 1998, c. 19, s. 156 (2).

Contents of description

157. (1) A description of a vacant land condominium corporation shall contain,

- (a) a plan of survey showing the perimeter of the horizontal surface of the land, the perimeter of the buildings and structures on the common elements and the boundaries of each unit;
- (b) subject to section 158, architectural plans of the buildings and structures included in the common elements and, if there are any, structural plans of them;
- (c) subject to section 158, a certificate of an architect that the buildings included in the common elements have been constructed in accordance with the regulations made under this Act and, if there are structural plans, a certificate of an engineer that the buildings have been constructed in accordance with the regulations;
- (d) a description of all interests appurtenant to the land that are included in the property; and
- (e) all other material that the regulations made under this Act require. 1998, c. 19, s. 157 (1); 2001, c. 9, Sched. D, s. 3 (3).

Application

(2) Subsection 8 (1) and clause 8 (3) (b) do not apply to vacant land condominium corporations. 1998, c. 19, s. 157 (2).

Buildings on common elements

158. (1) A declaration and description of a vacant land condominium corporation that show buildings, structures, facilities and services to be included in the common elements shall not be registered unless,

- (a) all buildings, structures, facilities and services shown in the declaration and description to be included in the common elements have been completed, installed and provided in accordance with the regulations made under this Act; or
- (b) the declarant provides to a person or body, including an approval authority, specified by the municipality in which the land is situated, or the Minister of Municipal Affairs and Housing if the land is not situated in a municipality, a bond or other security that is acceptable to the municipality or the Minister, as the case may be, and that is sufficient to ensure that,
 - (i) the buildings and structures will be completed and installed in accordance with the regulations made under this Act,
 - (ii) the facilities and services will be installed and provided, and
 - (iii) the items described in clauses 157 (1) (b) and (c) will be included in an amendment to the description. 1998, c. 19, s. 158 (1).

Partial release

(2) The person holding the bond or other security may provide a partial release of it to the declarant with the consent of the municipality or the Minister of Municipal Affairs and Housing, as the case may be. 1998, c. 19, s. 158 (2).

Full release

- (3) The person holding the bond or other security shall not release it in full until,
- (a) all the buildings, structures, facilities and services to be included in the common elements have been completed and installed in accordance with the regulations made under this Act; and
 - (b) the declarant has registered an amendment to the description consisting of the items described in clauses 157 (1) (b), (c) and (e). 1998, c. 19, s. 158 (3).

Consent of owners not required

(4) Section 107 does not apply to an amendment to the description if the amendment complies with clause (3) (b). 1998, c. 19, s. 158 (4).

Status of buildings in corporation

159. (1) The buildings and structures located on a unit or on the common elements of a vacant land condominium corporation, whether or not the buildings and structures had been constructed at the time of the registration of the declaration and description, are real property and form part of the unit or common elements respectively. 1998, c. 19, s. 159 (1).

Insurance

(2) The corporation is exempt from the obligation to obtain and maintain the insurance described in section 99 for buildings and structures located on a unit. 1998, c. 19, s. 159 (2).

Owner to insure

(3) The owner of a unit shall obtain and maintain the insurance for damage to the unit that, but for subsection (2), the corporation would have had to obtain with respect to the unit. 1998, c. 19, s. 159 (3).

By-laws

160. In addition to the power to make, amend or repeal by-laws under subsection 56 (1), the board of a vacant land condominium corporation may, subject to section 56, make, amend or repeal by-laws, not contrary to the declaration, specifying minimum maintenance requirements for a unit or a building or structure located on a unit. 1998, c. 19, s. 160.

Disclosure statement

161. (1) Before delivering the first disclosure statement mentioned in section 72, the declarant with respect to a unit or a proposed unit in a vacant land condominium corporation shall request from the municipality in which the land is situated or from the Minister of Municipal Affairs and Housing if the land is not situated in a municipality, a statement of the services provided by the municipality or the Minister, as the case may be, including the construction and maintenance of roads. 1998, c. 19, s. 161 (1).

Contents

(2) In addition to the material required under subsection 72 (3), a disclosure statement relating to the purchase of a unit or a proposed unit in a vacant land condominium corporation shall include,

- (a) whatever statement that the declarant has received from the municipality or the Minister of Municipal Affairs and Housing, as the case may be, in response to a request; and
- (b) all other material that the regulations made under this Act require. 1998, c. 19, s. 161 (2).

If no statement received

(3) If the declarant has not received any statement in response to a request within 30 days of making it, the disclosure statement shall contain a statement that the declarant has requested a statement under subsection (1) but has not received any statement in response to the request. 1998, c. 19, s. 161 (3).

Repair and maintenance

162. (1) Subject to the regulations made under this Act, sections 89, 90, 91 and 92 do not apply to a vacant land condominium corporation. 1998, c. 19, s. 162 (1).

Extent of obligations

(2) For the purpose of this section, the obligation to repair after damage includes the obligation to repair and replace after damage or failure and the obligation to maintain includes the obligation to repair after normal wear and tear but does not include the obligation to repair after damage. 1998, c. 19, s. 162 (2).

Common elements

(3) A vacant land condominium corporation shall maintain the common elements and repair them after damage. 1998, c. 19, s. 162 (3).

Units

(4) The owner of a unit in a vacant land condominium corporation shall maintain the owner's unit and repair it after damage. 1998, c. 19, s. 162 (4).

Work done for owner

(5) If an owner of a unit in a vacant land condominium corporation fails to maintain the owner's unit within a reasonable time or to repair it within a reasonable time after damage, the corporation may maintain or repair the unit, as the case may be. 1998, c. 19, s. 162 (5).

Cost

(6) An owner shall be deemed to have consented to the repairs or maintenance carried out by the corporation and the cost of the work shall be added to the owner's contribution to the common expenses. 1998, c. 19, s. 162 (6).

Substantial damage

163. (1) If the board of a vacant land condominium corporation determines under section 123 that substantial damage has occurred to a building located on a unit and the owners do not vote for termination under that section, the owner of the unit may elect,

- (a) not to repair the damage; or
- (b) to replace the building with a different building, subject to this Act, the declaration and the by-laws. 1998, c. 19, s. 163 (1).

Owner's duty

(2) An owner of a unit who elects not to repair the damage shall, as closely as is reasonably possible, restore the land on which the building was located to the state that the land was in immediately before the construction of the building. 1998, c. 19, s. 163 (2).

Restoration done by corporation

(3) If the owner of the unit does not do the restoration within a reasonable time, the corporation may do it. 1998, c. 19, s. 163 (3).

Cost

(4) The owner shall be deemed to have consented to the restoration done by the corporation and the cost of the restoration shall be added to the owner's contribution to the common expenses. 1998, c. 19, s. 163 (4).

**PART XIII
LEASEHOLD CONDOMINIUM CORPORATIONS**

Creation

164. (1) Subject to the regulations made under this Act, a declarant may register a declaration and description that divide the leasehold estate in the land described in the description into units and common elements. 1998, c. 19, s. 164 (1).

Type

(2) The type of corporation created by the registration of a declaration and description under subsection (1) shall be known as a leasehold condominium corporation. 1998, c. 19, s. 164 (2).

Application

(3) Subject to this Part, Parts I to IX and XIV apply with necessary modifications to a leasehold condominium corporation. 1998, c. 19, s. 164 (3).

Other corporations

(4) This Part does not apply to a corporation that is not a leasehold condominium corporation. 1998, c. 19, s. 164 (4).

Leasehold interest of owners

165. (1) Each leasehold interest in a unit in a leasehold condominium corporation and its appurtenant common interest is valid even if the lessor is the owner of the leasehold interest and in that case the legal title and the leasehold interest shall be deemed not to merge. 1998, c. 19, s. 165 (1).

Same term

(2) All leasehold interests in units in a leasehold condominium corporation and their appurtenant common interests shall be for the same term. 1998, c. 19, s. 165 (2).

Term before renewal

(3) The term of the leasehold interests before a renewal under section 174 shall be not less than 40 years less a day and not more than 99 years as specified in the declaration. 1998, c. 19, s. 165 (3).

Lessor's consent not required

(4) The owner of a unit in a leasehold condominium corporation may, without the consent of the lessor, transfer, mortgage, lease or otherwise deal with the leasehold interest in the unit. 1998, c. 19, s. 165 (4).

Transfer of unit

(5) The owner of a unit in a leasehold condominium corporation may not transfer less than the whole leasehold interest in the unit and its appurtenant common interest. 1998, c. 19, s. 165 (5).

Form of transfer

(6) A leasehold interest in a unit in a leasehold condominium corporation shall be transferred in accordance with section 105 of the *Land Titles Act*, even if the land included in a leasehold condominium corporation is situated within the boundaries of a registry division. 1998, c. 19, s. 165 (6).

Application of Residential Tenancies Act, 2006

(7) The *Residential Tenancies Act, 2006* does not apply to the leasehold interest of an owner of a unit in a leasehold condominium corporation and its appurtenant common interest but does apply to a lease of an owner's leasehold interest in a unit. 1998, c. 19, s. 165 (8); 2006, c. 17, s. 248 (5).

(8) SPENT: 1998, c. 19, s. 165 (8).

Declaration

166. (1) A declaration for a leasehold condominium corporation shall not be registered unless it is executed by the lessor. 1998, c. 19, s. 166 (1).

Contents

(2) In addition to the requirements of subsection 7 (2), a declaration for a leasehold condominium corporation shall contain,

- (a) a statement of the term of the leasehold interests of the owners;

- (b) a schedule setting out the amount of rent for the property payable by the corporation on behalf of the owners to the lessor and the times at which the rent is payable for at least the first five years immediately following the registration of the declaration and description;
- (c) a formula to determine the amount of rent for the property payable by the corporation on behalf of the owners to the lessor and the times at which the rent is payable during the remainder of the term of the owners' leasehold interests following the time for which the schedule described in clause (b) states the amount of rent payable;
- (d) a schedule of all provisions of the leasehold interests that affect the property, the corporation and the owners; and
- (e) all other material that the regulations made under this Act require. 1998, c. 19, s. 166 (2).

Leasehold interests in property

(3) Provisions of the leasehold interests in the property are not binding on the property, the corporation or the owners unless the declaration sets them out and states that they are binding. 1998, c. 19, s. 166 (3).

Amendment of declaration

(4) An amendment to the declaration that affects the leasehold interests in the property is not effective unless the lessor has consented in writing to the amendment. 1998, c. 19, s. 166 (4).

Description

167. (1) In addition to the requirements of section 8, a description for a leasehold condominium corporation shall contain all other material that the regulations made under this Act require. 1998, c. 19, s. 167 (1).

Registration

(2) In addition to the requirements of section 8 and subject to the regulations made under this Act, a description for a leasehold condominium corporation shall not be registered unless the buildings and improvements to the property form part of the property. 1998, c. 19, s. 167 (2).

Amendment to description

(3) An amendment to the description that affects the leasehold interests in the property is not effective unless the lessor has consented in writing to the amendment. 1998, c. 19, s. 167 (3).

Leasehold estate in property

168. (1) A leasehold condominium corporation shall, on behalf of the owners, exercise all rights and perform all obligations of the owners with respect to the leasehold estate in the property. 1998, c. 19, s. 168 (1).

Same

(2) The owners shall not exercise the rights or perform the obligations mentioned in subsection (1). 1998, c. 19, s. 168 (2).

Mediation

(3) The lessor and the corporation shall be deemed to have agreed that either party may submit to mediation a disagreement on the interpretation of the provisions of the leasehold interests in the property that bind the property. 1998, c. 19, s. 168 (3).

Application of s. 132

(4) If the lessor or the corporation submits a disagreement to mediation, section 132 applies to it. 1998, c. 19, s. 168 (4).

Disclosure statement

169. In addition to the matters mentioned in subsection 72 (3), a disclosure statement in the case of a leasehold condominium corporation shall include,

- (a) a statement by the declarant whether the provisions of the leasehold interests in the property are in good standing and have not been breached; and
- (b) all other material that the regulations made under this Act require. 1998, c. 19, s. 169.

Status certificate

170. In addition to the material mentioned in subsection 76 (1), a status certificate in the case of a leasehold condominium corporation shall include,

- (a) a statement by the corporation whether the provisions of the leasehold interests in the property are in good standing and have not been breached;

- (b) a statement by the corporation whether the lessor has applied for a termination order under section 173; and
- (c) all other material that the regulations made under this Act require. 1998, c. 19, s. 170.

Rent for property

171. (1) The rent for the property that a leasehold condominium corporation is required to pay to the lessor on behalf of the owners and all other amounts necessary to comply with the provisions of the leasehold interest affecting the property are a common expense. 1998, c. 19, s. 171 (1).

Contribution of owners

(2) The corporation shall collect from each owner, as part of the owner's contribution to the common expenses, a portion of the rent and the amounts described in subsection (1) based on the proportion of contributions to the common expenses for the owner's unit set out in the declaration. 1998, c. 19, s. 171 (2).

Payment to lessor

(3) The corporation shall remit to the lessor, from the contributions collected from the owners under subsection (2), the amounts to which the lessor is entitled under the provisions of the leasehold interest affecting the property. 1998, c. 19, s. 171 (3).

Consent of lessor for termination

172. A leasehold condominium corporation shall not register a notice of termination under section 122 or 123 or sell the property or a part of the common elements under section 124 unless the lessor has consented to and executed the notice or the agreement of purchase and sale, as the case may be. 1998, c. 19, s. 172.

Termination by lessor

173. (1) The lessor shall not terminate a leasehold interest in a unit in a leasehold condominium corporation unless the lessor has been granted an order terminating the leasehold interests in all of the units. 1998, c. 19, s. 173 (1).

Application

(2) The lessor may make an application to the Superior Court of Justice for an order terminating all of the leasehold interests, if a leasehold condominium corporation,

- (a) has failed to remit to the lessor the amounts to which the lessor is entitled under the provisions of the leasehold interest affecting the property; or
- (b) has failed to comply with a court order. 1998, c. 19, s. 173 (2); 2000, c. 26, Sched. B, s. 7 (7).

Grounds for order

(3) On an application, the court may make an order if it is satisfied that the order is just and equitable, having regard to the scheme and intent of this Act and the interests of all persons that would be affected by the order. 1998, c. 19, s. 173 (3).

Contents of order

(4) The order may provide that all of the leasehold interests are terminated subject to the conditions set out in the order or may contain any other provision that the court considers appropriate in the circumstances. 1998, c. 19, s. 173 (4).

Registration of order

(5) If the court makes an order terminating all of the leasehold interests, the lessor shall register the order. 1998, c. 19, s. 173 (5).

Expiration of leasehold interests

174. (1) At least five years before the end of the term of the leasehold interests in the units in a leasehold condominium corporation, the lessor shall give the corporation,

- (a) a written notice of intention to renew all the leasehold interests that sets out the provisions applicable to the renewal; or
- (b) a written notice of intention not to renew all the leasehold interests. 1998, c. 19, s. 174 (1).

Term of renewal

(2) A renewal of the leasehold interests shall be for at least 10 years or the greater term specified in the notice. 1998, c. 19, s. 174 (2).

Notice to owners

- (3) Upon receiving the notice, the corporation shall send a copy of it to the owners. 1998, c. 19, s. 174 (3).

Failure to give notice

(4) If the lessor does not give the required notice, the lessor shall be deemed to have given the notice required to renew the leasehold interests for 10 years subject to the same provisions that govern the leasehold interests before the renewal and the corporation shall send a notice of that fact to the owners. 1998, c. 19, s. 174 (4).

Owners' vote for termination

(5) The leasehold interests shall be renewed for the term and subject to the provisions specified in the notice or the deemed notice, as the case may be, unless the owners who own at least 80 per cent of the units cast a vote against the renewal no later than one year after the notice or the deemed notice, as the case may be, was given to the corporation. 1998, c. 19, s. 174 (5).

Notice of termination

(6) The corporation shall give notice to the lessor if, under subsection (5), the owners vote against the renewal. 1998, c. 19, s. 174 (6).

Registration of notice

(7) The lessor shall prepare a notice in the form prescribed by the Minister stating whether the leasehold interests have been renewed or not and register the notice in,

- (a) the land titles division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office has a land titles division; or
- (b) the registry division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office does not have a land titles division. 1998, c. 19, s. 174 (7).

New provisions upon renewal

(8) If the leasehold interests are renewed subject to provisions that are different from those that applied before the renewal, the declaration shall be deemed to be amended to contain the provisions that apply upon the renewal and the corporation shall register a copy of the provisions as an amendment to the declaration. 1998, c. 19, s. 174 (8).

Consent of owners not required

(9) Section 107 does not apply to an amendment to the declaration if the amendment complies with subsection (8). 1998, c. 19, s. 174 (9).

Effect of termination or expiration

175. (1) In the case of a leasehold condominium corporation, upon the registration of a notice of termination under section 122 or 123, the registration of a deed to the property under section 124, expropriation under section 126, the registration of an order under section 128 or 173 (or such other date, if any, specified in the registered order) or the registration of a notice under section 174 that the leasehold interests in the units have not been renewed (or such other date, if any, specified in the registered notice),

- (a) this Act ceases to govern the property;
- (b) the leasehold interests in the units are terminated;
- (c) claims against the leasehold interests that do not secure the payment of money are extinguished, unless the lessor consented to their registration, in which case they are continued against the lessor's interest; and
- (d) claims against the leasehold interests that secure the payment of money are claims against the persons who were owners of the leasehold interests immediately before the termination of those interests, and not against the land. 1998, c. 19, s. 175 (1).

Same

(2) Section 127 does not apply to a leasehold condominium corporation. 1998, c. 19, s. 175 (2).

Appointment of trustee

(3) Despite section 129, before the time at which this Act ceases to govern the property, the corporation shall appoint a trustee to pay out the money remaining in the corporation's reserve fund in accordance with this section. 1998, c. 19, s. 175 (3).

Distribution of money

(4) When this Act ceases to govern the property, the trustee shall pay out the money remaining in the reserve fund at that time in accordance with the following priorities:

1. To the lessor, the amount, if any, that is required to repair damage to the property that has not been repaired.
2. To each of the owners, a share of the balance in the same proportion as their common interests, subject to subsection (5). 1998, c. 19, s. 175 (4).

Payment of secured claims

(5) Before paying out a share of money payable to an owner, the trustee shall deduct from the share the amount of claims against the owner that secure the payment of money and shall remit the deduction to the persons entitled to the claims. 1998, c. 19, s. 175 (5).

**PART XIV
GENERAL**

Act prevails

176. This Act applies despite any agreement to the contrary. 1998, c. 19, s. 176.

Regulations

177. (1) The Lieutenant Governor in Council may make regulations,

1. classifying corporations, properties or persons for the purposes of the regulations;
2. specifying prohibitions, restrictions and other requirements that apply to the registration of a declaration and description in respect of any type of corporation;
3. specifying requirements for the construction of the buildings described in a description for the purpose of a certificate mentioned in clause 8 (1) (e) or 157 (1) (c);
4. specifying material to be included in a declaration, a description, a report of a performance audit mentioned in subsection 44 (8), a table of contents, a disclosure statement, a budget statement, a status certificate, an agreement described in clause 98 (1) (b) or a notice of meeting mentioned in subsection 120 (3);
5. specifying deficiencies for the purpose of a performance audit under section 44 and governing the obligations of the person who conducts the audit;
6. requiring corporations to keep books, accounts and records and governing the books, accounts and records that corporations are required to keep;
7. governing the determination of occupancy standards under section 57;
8. specifying the form and content of financial statements and audit reports;
9. prescribing rates of interest payable under this Act, including rates of interest that shall be paid on money required to be held in trust under this Act;
10. governing funds intended for the payment of common expenses;
11. classifying reserve fund studies for the purposes of section 94;
12. governing the contents of any or all classes of reserve fund studies, the standards that shall be observed in conducting them and the times at which they shall be conducted;
13. prescribing the persons who may conduct any or all classes of reserve fund studies and specifying the qualifications of the persons and the affiliations for the purposes of subsection 94 (6) that disentitle the persons from conducting the reserve fund studies;
14. governing the cost mentioned in clause 97 (2) (c);
15. specifying restrictions on the right of corporations to amalgamate under section 120 and requirements for corporations to fulfill in order to amalgamate;
16. specifying restrictions on the right of a declarant to register a declaration and description to create a common elements condominium corporation, a vacant land condominium corporation or a leasehold condominium corporation and specifying requirements for the declarant to fulfill in order to make the registrations, including requirements for the purpose of section 157;
17. respecting the manner in which a common interest attaches to an owner's parcel of land for the purpose of subsection 139 (3);

18. specifying restrictions on the right of a declarant to register an amendment to a declaration and description required for creating a phase in a phased condominium corporation and specifying requirements for the declarant to fulfill in order to make the registrations;
19. governing the manner in which sections 89, 90, 91 and 92 apply to a vacant land condominium corporation;
20. prescribing the amounts of fees that are payable or chargeable under this Act;
21. prescribing forms, other than forms mentioned in this Act as forms prescribed by the Minister, and providing for their use;
22. prescribing any matter mentioned in this Act as prescribed, other than forms mentioned in this Act as forms prescribed by the Minister;
23. respecting any matter that this Act mentions may be or shall be dealt with in the regulations;
24. exempting any class of corporations, properties or persons from any provision of this Act or the regulations;
25. respecting any matter necessary or advisable to carry out the intent and purpose of this Act. 1998, c. 19, s. 177 (1).

Minister's regulations

(2) The Minister may make regulations,

1. respecting the registration and recording of declarations, descriptions, amendments to declarations or descriptions, by-laws, notices of termination and other instruments;
2. governing the method of describing land or any interest in land in instruments affecting a property or part of a property;
3. governing surveys, plans, specifications, certificates, descriptions and diagrams, and prescribing procedures for their registration and amendment;
4. prescribing the duties of officers appointed under the *Land Titles Act* or the *Registry Act* for the purpose of this Act;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 is amended by striking out "or the *Registry Act*". See: 2012, c. 8, Sched. 9, ss. 5, 6.

5. requiring the payment of fees to officers appointed under the *Land Titles Act* or the *Registry Act* and prescribing the amounts of the fees;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 5 is amended by striking out "or the *Registry Act*". See: 2012, c. 8, Sched. 9, ss. 5, 6.

6. respecting the names of corporations and requiring that the name of a corporation indicate whether the corporation is a freehold, leasehold, common elements, phased or vacant land condominium corporation;
7. governing the circumstances and the manner in which the *Corporations Information Act* is to apply to corporations, including the time at which that Act is to apply;
8. requiring that a description in respect of any class of properties contain a survey of the properties showing the units and common elements, in lieu of or in addition to the requirements of section 8;
9. prescribing the material required to be contained in the certificate as to the status of an amalgamating corporation for the purpose of clause 120 (3) (c);
10. prescribing forms described in this Act as forms prescribed by the Minister and providing for their use. 1998, c. 19, s. 177 (2).

Application of regulations

(3) A provision of a regulation may be made to apply to,

- (a) all corporations or any class or type of corporations;
- (b) all properties or any class of properties; or
- (c) all persons or any class of persons. 1998, c. 19, s. 177 (3).

Incorporation by reference

(4) A regulation made under subsection (1) that prescribes any of the following things may adopt by reference, with the changes, if any, that the Lieutenant Governor in Council considers advisable, any principle, standard, code or formula, as it

reads at the time the regulation is made or as it is amended from time to time, whether before or after the time at which the regulation is made:

1. The manner in which financial statements of a corporation are to be prepared or generally accepted accounting principles for the purpose of those statements.
2. The manner in which the auditor's report described in subsection 67 (1) is to be prepared or generally accepted auditing standards for the purpose of that report. 2001, c. 9, Sched. D, s. 3 (4).

Transition

178. (1) Corporations created under the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, are continued as corporations under this Act. 1998, c. 19, s. 178 (1).

Lien

(2) A corporation's lien that was created under the *Condominium Act* for the default of an owner in the obligation to contribute to the common expenses is continued as a lien under subsection 85 (1) of this Act. 1998, c. 19, s. 178 (2).

Transition, turnover

179. (1) If the corporation was created under the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, section 43 does not apply and section 26 of that Act, as it existed immediately before the coming into force of section 184, continues to apply. 1998, c. 19, s. 179 (1).

Offences under former Act

(2) Section 55 of the *Condominium Act*, as it existed immediately before the coming into force of section 184, continues to apply with respect to contraventions of subsection 26 (3) of that Act. 1998, c. 19, s. 179 (2).

Transition, disclosure

180. (1) If, on or before the day sections 44, 72 to 75 and 78 to 82 come into force, the declarant with respect to a corporation has entered into one or more agreements of purchase and sale for a unit or proposed unit in the corporation,

- (a) those sections do not apply; and
- (b) subject to subsection (2), sections 51 to 54 of the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, except for subsection 52 (5) of that Act, as those sections existed immediately before the coming into force of section 184, continue to apply. 1998, c. 19, s. 180 (1).

Not a material amendment

(2) For the purposes of subsection 52 (2) of the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, a change to the information required to be contained in a disclosure statement that arises only as a result of the coming into force of this Act does not constitute a material amendment to the disclosure statement. 1998, c. 19, s. 180 (2).

Offences under former Act

(3) Section 55 of the *Condominium Act*, as it existed immediately before the coming into force of section 184, continues to apply with respect to contraventions of subsection 52 (5), (6), or 53 (1) of that Act. 1998, c. 19, s. 180 (3).

Transition, insurance

181. (1) If, at the time section 99 comes into force, the corporation has entered into an insurance policy under section 27 of the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, that has not expired, section 99 does not apply and section 27 of that Act, as it existed immediately before the coming into force of section 184, continues to apply. 1998, c. 19, s. 181 (1).

Renewals

(2) Despite subsection (1), section 99 applies if the corporation renews an insurance policy described in that subsection after section 99 comes into force. 1998, c. 19, s. 181 (2).

Transition, termination of agreements

182. If the corporation has entered into an agreement described in sections 111 and 112 before those sections come into force, those sections do not apply and section 39 of the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, as that section existed immediately before the coming into force of section 184, continues to apply. 1998, c. 19, s. 182.

Transition, regulations

183. Despite section 184, the Lieutenant Governor in Council may by regulation revoke regulations made under section 59 of the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, as that section read immediately before section 184 comes into force, if the Minister makes a regulation under subsection 177 (2) that is inconsistent with those regulations. 1998, c. 19, s. 183.

184.-186. OMITTED (AMENDS OR REPEALS OTHER ACTS). 1998, c. 19, ss. 184-186.

187. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1998, c. 19, s. 187.

188. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1998, c. 19, s. 188.

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