

PROPOSED AMENDMENTS TO THE APARTMENT OWNERSHIP LAW AND CONDOMINIUM MANGEMENT AUTHORITY ACT¹

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The principle amendment that needs to be done is to remove the requirement to register a Provisional Condominium Property and a Semi Condominium Property as currently found in the Apartment Ownership (Amendment) Act No. 39 of 2003

REASON:

Registering twice (sometimes thrice if there is a Semi Condominium property), is time consuming and affects both the Developer and the purchaser. Developers do not want to go through the bureaucratic hassle of registering a Provisional Condominium Property and thereafter a completed Condominium Property, mainly due to the unreasonable delay and excessive costs involved in registering a condominium property more than once. **If we are to change the law, then it must be changed to bring about a better situation than what we have now.**

PROPOSED AMENDMENTS TO THE CONDOMINIUM MANAGEMENT AUTHORITY ACT

The following to be incorporated in the **Condominium Management Authority Act No. 24 of 2003** or be issued as **Gazetted Regulations**, as matters that need to be done prior to pre-selling of a proposed condominium unit. These should be considered as mandatory to register the proposed condominium project and the Condominium Plan. The Authority which grants approval / registration of a proposed project **which is seen only on paper, should be the Regulator**, the Condominium Management Authority (CMA) and not the Land or Title Registry, which register title of freehold property physically seen on ground.

- The Developers must strictly prepare the Surveyor drawn sub division plan of the proposed building as a **Condominium Plan** along with the architect drawn **Building plan**. Both the surveyors and architects must work together, Now that does not happen resulting in delays when the building is completed as the Condominium Plan and Building Plan do not tally and there are other technical issues as well. This is one of the main concerns raised by the Institute of Architects.
- Both the above mentioned documents along with the Municipality / UDA required documents as indicated in the PPC (Preliminary Planning Clearance) should be submitted to the Condominium Management Authority (CMA) for approval.
- CMA should also be given a Title Report from a lawyer not connected to the Developer (as discussed at Committee Meeting) and copies of all Deeds and Title Certificates and a the following **Condominium Information Statement** -

“The Developer shall prepare a **Condominium Information Statement** before offering to the public for sale any interest in a condominium parcel. The Condominium Information Statement shall be filed with the Condominium Management Authority and shall be released to all prospective purchasers and kept at the Developer’s office for perusal by the public during office hours. The person preparing all or part of the Condominium Information Statement is liable for

¹ Given in this paper are my suggestions submitted in 2021 to the Advisory Committee appointed by the Minister of Justice to review the and amend the Apartment Ownership Law and the Condominium Management Authority Act

any false or misleading statements or for any omission of material fact. The Developer is not liable for any false or misleading statement or any omission of material fact unless the Developer actually knew or should have known of the statement or omission.

A **Condominium Information Statement** must contain or accurately disclose:

- (a)
 - (i) the name and principal address of the Owner and location of the condominium property;
 - (ii) The name and principal address of the Developer.
- (b)
 - (i) If the condominium property is not a phased condominium construction – a general description of the condominium property including the type of units whether residential or commercial, the number of buildings, the number of condominium parcels in each building, the floor area of the condominium parcels, the number of bedrooms and bathrooms in each condominium parcel, the total number of units and the number of car park allocations.
 - (ii) If the condominium property is a phased condominium construction – Apart from the information to be provided under (i) above, the maximum number of buildings that may be contained within the condominium property and the probable dates of completion of each building, the maximum number of units that may be added to the condominium property, the respective floor area in each building and the number of car park allocations, the estimated completion date of the building and of each phase of the project. **This date can be extended only with the approval of the CMA.**
- (c) Any restriction on the sale of units arising from a contract entered into between the Owner and Developer.
- (d) A general description of the items that the developer is committing to furnish for each room of the condominium parcel,(if any)
- (e) a brief narrative description of any development rights reserved by the Developer and of any conditions relating to or limitations upon the exercise of development rights;
- (f) a description of the common facilities provided for the use and enjoyment of the owners, such as a swimming pool, its location, approximate size and depths, and description of such other facilities and whether such facilities form part of the common elements of the subdivided building and the fees (if any) payable by users of such facilities, the year in which each facility will be available for use.
- (g) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases.
- (h) the name of the Managing Agent and a copy of the contract proposed to be signed between the said Managing Agent and the Developer / Management Corporation for management and administration of the common elements of the condominium property.
- (i) copies of the proposed constitution of the Management Corporation (incorporating the statutory constitution), the bylaws, any rules of the association, and amendments thereto and copies of sales agreements and connected documents other than loan documents, that are required by the Developer / Owner to be signed by prospective purchasers at closing;

The Developers shall not incorporate clauses that limit their liability excessively and shall warrant and defend the title and ensure that the unit transferred shall be free of encumbrances.

- (j) **a projected budget for the Management Corporation that applies for the first fiscal year** following the date of the first conveyance to a purchaser, with the projected monthly common expenses; a statement of the budget's assumptions including projected income from contributions and depreciation of capital items;
- (k) general description of each lien, lease, or encumbrance on or affecting the title of the condominium property and the proposed encumbrances that may be attached to the condominium property prior to its completion;
- (l) description of the warranties provided by the Developer ;
- (m) general description of the insurance coverage of the condominium property provided for the benefit of unit owners;
- (n) current or expected contribution or service charges to be paid by condominium parcel owners for the maintenance and management of the common elements and other facilities related to the condominium property with a schedule giving the share values assigned to the condominium parcels and the corresponding estimated contributions / service charges;
- (o) a dated statement by the Developer, based on a report by an independent architect or engineer, describing the condition of all structural components and mechanical and electrical installations within the building and the useful life of such mechanical and electrical installations;
- (p) A statement by the Developer of the availability of funds for the construction of the building, supported by a certificate of a recognized financial institution stating availability of financial support for the construction of the building, details of the funds already raised and to be raised in the future indicating the collateral proposed, except in the case of a completed building where such statement or certificate shall not be necessary.

The Developer shall promptly amend the Condominium Information Statement to reflect a material and substantial change in its contents, if such changes occur after the issue of the Condominium Information Statement. If the change may adversely affect a prospective purchaser who has received a Condominium Information Statement, the Developer shall furnish a copy of the amendment to the prospective purchaser before closing of the sales transaction, giving the prospective purchaser fourteen (14) days from such date of releasing the amended Condominium Information Statement, to rescind the sales contract, if he or she so desires. In the event a rescission of the contract is requested in writing by the prospective purchaser, the Developer or the owner of the land parcel shall refund all sums of money taken as advance payments from the prospective purchaser.

- The CMA should consider the application for a proposed condominium project at their regular Committee Meetings where representatives from all relevant authorities and professional bodies are present.
- **The Developer cannot start pre-selling until the above documents are submitted to the CMA for approval. Only after the CMA grants approval or conditional approval can the Developer start pre-selling.**

- **The CMA should be given a time limit to grant such approval or Conditional approval.** If this industry is to move forward both the CMA and UDA/Municipalities with professional bodies must work together and that should take place at the Committee Meetings of the CMA. At the same time, it needs to be mentioned that the CMA must **have trained officers** to attend to these tasks, promptly and efficiently without accumulating files.
- **Consequently there will be only ONE registration at the Land Registry or Title Registry (i.e. Completed condominium registration (either totally complete or completed in phases).**
- This will do away with the present confusion which has resulted in some Developers doing Deeds of Transfer on Provisional Condominium registration as the staff at Land / Title Registries are confused and cannot understand on which Register a deed of transfer can be registered and which should not be so recorded. The Registers carrying the volume prefix "ConP" are for Provisional Condominium registration but there have been Deeds of Transfer registered on such Registers.
- As regards the term "Semi Condominium property" (which is not found in any other jurisdictions) it denotes "half" completed and does not correctly describe, for example: a partly completed registered condominium property if all the floors except the upper floor units were not completed. Neither can it be used to describe a phased condominium property, where each tower gets registered upon issuance of a COC for the units in the said tower when the other towers are not completed. The other reason, which I explained during the Committee meeting is the reference to the Semi Condominium Plan in the Deeds of Transfer and Title Certificates upon transfer of title. When the condominium building becomes completed it will be based on a completed Condominium Plan. Owners of that condominium property cannot have deeds under a Semi Condominium Plan, as well as under a completed Condominium Plan, as it should be the same condominium plan. The Management Corporation carries the reference to only one Condominium Plan. In a phased condominium project, where units are added or buildings are added, the surveyor should show the areas or the units that will be completed later so that the same Condominium Plan No can be continued for the future additions as well. **We need to consider the method adopted in other countries in respect of such additions to condominium plans and discuss with the Surveyors how it can be done so that the Management Corporation as an entity will carry the same condominium plan no.**

PROPOSED AMENDMENTS TO THE APARTMENT OWNERSHIP LAW

The important sections of **Apartment Ownership Law No. 11 of 1973 (as amended by Act No. 45 of 1982 and Act No. 39 of 2003)** that require amendments -

Section 1 - I believe we need to change the title to “ **Condominium Property Law** “ as the word ‘apartment’ denotes a residential property, which was the main type of condominiums that were found in 2003 and prior to that. Now we have commercial condominiums and mixed development properties and the term “Apartment’ is no longer suitable for an industry which covers both types.

We need to use the word “**alienated**” as presently found in the Act, as that denotes “divided and defined” land. Otherwise, by merely referring to “land” it will result in bringing “undivided” land as well, which will cause problems from people having co-ownership rights

Section 2 - I would suggest that we leave the description as found in the present Act in Sec 2 relating to 'Application of the Law' but take away reference to categories, “Provisional Condominium Property” and “Semi Condominium Property”.

Section 3 - There is a “prescribed form” only for Title Registration and no such forms for Deed Registration. Act No. 39 of 2003 has several places with this word and there are other phrases which limits the Act only for Title

Registration. It is a time consuming task to pick these words and phrases to incorporate the requirements under the Registration of Documents Ordinance, but can be done.

I would suggest that we amend Sec. 3 as follows:

(a) "The Developer of a proposed condominium property shall not offer for sale any undivided part or portion of a proposed condominium property unless the provisions (*list the Section/s*) of the Condominium Management Authority Act No. 24 of 2003 relating to the pre-sales or alienation of condominium parcels have been complied with. A failure to comply with the said provisions shall be an offense punishable under Sec...."

(b) " The owner of any land upon which a building has been constructed or partly constructed containing condominium parcels and has been approved for occupation with the issuance of a Certificate of Conformity by the relevant authority, shall submit for registration to the relevant Land Registry or Title Registry, as applicable, the Condominium Plan approved by the Condominium Management Authority in terms of the Registration of Title Act No. 21 of 1998 or the Registration of Documents Ordinance(Chapter 117), as applicable along with the documents required for such registration. Such application shall be made within one month from the date of issue of the Certificate from the Condominium Management Authority with an annexed Certificate of Conformity (COC) for the subdivided building. A failure to comply with this section shall be an offense punishable under Sec...." (*to be added*)

(c) The following to be incorporated to the **revised new Sec..... to safeguard the rights of lenders and the rights of purchasers of encumbered condominium parcels – An important new amendment.**

“ All mortgages registered on the land parcel as security for funds raised by the Developer in respect of a proposed or unregistered condominium property shall be covered by an insurance policy corresponding to the mortgage value against all risks arising from the failure to complete the condominium project, destruction of the whole or partly completed building, defective construction, loss from fire and other natural forces. Without such backing of an insurance policy no mortgage shall be registered on the land parcel or on the proposed condominium parcel. The premium of the insurance cover shall be shared equally between the lender and Developer or lender and prospective purchaser, as applicable. The lender/mortgagee shall have the right to claim on the insurance policy in the event the risk covered by the policy takes place and the borrower fails to repay funds with accumulated interests. Upon the repayment of the borrowed funds or upon the release of insurance proceeds as aforesaid the Lender / Mortgagee shall issue Deeds of Release to purchasers of condominium parcels releasing any registered condominium parcel from the mortgage attached to the same. A failure or an unreasonable delay in issuing a Deed of Release by the lender after the receipt of the borrowed funds or the insurance proceeds, as the case may be, shall be a punishable offense under Sec....."

(d) The following to be incorporated to the **revised new Sec to allow 'phased condominium property construction' (numbering to be discussed in line with the proposed amendment) – An important new amendment.**

“The Developer shall give a description of any development rights and other special rights reserved by the Developer, together with a legally sufficient description of the portion of land parcel to which each of those rights applies, and a time limit within which each of those rights must be exercised; If the Developer reserves the right, to create a phased construction of the condominium property by adding condominium parcels in another subdivided building or buildings constructed subsequently on the same alienated land in terms of **Sec 8A and 8B of the Apartment Ownership Law (as amended)**, the declaration or the prescribed form under the Registration of Title Act (as the case may be) must state, or provide a specific formula for determining, the fractional or percentage shares of the common expenses and the co-ownership of the common elements which shall be subsequently added to the completed condominium property to be allocated to the condominium parcels in each subdivided building”.

(e) The following to be incorporated to the **revised new Sec....** to **safeguard the rights of purchasers who pay advances for their condominium parcels** in terms of the pre-sales agreements - **An important new amendment.**

“If a prospective purchaser pays to the Developer an advance against the sale price of a proposed Condominium parcel, all such advances up to 50% of the sale price shall be deposited in an **Escrow Account** established with a licensed commercial bank managed by an Escrow Agent. The Escrow agent shall be independent of the developer and no developer or any officer, director, affiliate, subsidiary, or employee of a developer may serve as an Escrow agent.

Funds shall be released from the Escrow account in the following manner:

- (a) If a purchaser properly terminates the contract pursuant to the terms of the sales agreement or pursuant to this law, the funds shall be paid to the purchaser together with any interest earned.
- (b) If the purchaser defaults in the performance of his or her obligations under the sales agreement, the funds shall be paid to the developer together with interest earned.
- (c) Upon completion of fifty (50) percent of the building as certified by a qualified Quantity Surveyor or Chartered Civil Engineer, the funds in the Escrow account shall be disbursed to the developer by the Escrow agent unless prior to the disbursement the Escrow agent receives from the purchaser written notice of a dispute between the purchaser and developer. The Escrow Agent shall refer the dispute to the General Manager of the Condominium Management Authority for a decision in such a situation and act according to the latter’s directions.
- (d) The failure to comply with the provisions of this section renders the sales agreement voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts in commercial banks.
- (e) Any developer who willfully fails to comply with the provisions of this section concerning establishment of an Escrow account, deposits of funds in an escrow and / or withdrawal of funds from the Escrow account is guilty of an offence and shall be punishable under Sec....”.

Sec. 3 to 8 need to be redrafted on the basis of the suggestion given for Sec. 2. Please see my comments above. We should have a separate section(A) for Condominium Plan approval for proposed condominium property and Section (B) for registration of the completed Condominium property. Pre-sales are allowed only under the steps given in Sec. A and Deed transfer and Title Certificates only after registration of Condominium property. (B).

The method that I have suggested is the method adopted in all legal regimes worldwide, from Canada to Australia. Nowhere is there a Provisional Condominium registration. There is a mandatory requirement to submit the condominium plan to a Council or to a similar authority in Australia and other commonwealth countries, with strictly drawn condominium plans prior to pre-selling. Instead of Semi Condominium registrations, provision is made for phased condominium registrations, which we should incorporate in our law as well.

My suggestion is to revert back to the single condominium registration in Act No. 45 of 1982 and add relevant sections to make the approval of a Condominium Plan, Building Plan and connected documents necessary for pre-selling. Please see my comments as given above.

We cannot look at this from the perspective of the Developer and purchasers alone. Banks are a vital cog of this wheel as well. It is necessary to find a solution so that the Banks won’t be faced with problems due to work of errant Developers who use purchasers’ advances for other projects.

A new section making Escrow Accounts controlled by independent parties and not solely by Developers as suggested in my comment above should be brought in with restrictions for withdrawals of funds.

Further, a new section need to be added to make it mandatory for banks granting loans for condominium property development and for purchasers of condominiums to have an insurance cover so that in the event the project fails, the banks interests are safeguarded and the purchasers can get their title deeds without the banks having to hold on to the Developer's mortgaged condominium property. **(Please see my comments above for the suggested amendment)**

Section 10 - We should delete this section entirely along with Sec. 44 and incorporate in the Act that registration of condominium units can be done under both the Registration of Title Act and the Registration of Documents Ordinance. Instead we can have the following as the **new Sec. 10** –

(1) The Developer shall be deemed to have granted to the purchaser of each condominium parcel and to his/her successor **an implied warranty of fitness for purpose and merchantable quality** as follows:

- i. As to each condominium parcel, a warranty for three (03) years commencing with the completion of the subdivided building with the issuance of the Certificate of Conformity by the relevant Authority and an affirmation that the condominium parcel is free from defective materials and that it has been constructed in accordance with the applicable law, rules and regulations, according to sound engineering and construction standards and in a workmanlike manner.
- ii. As to the roof and structural components of the subdivided building a warranty for a period commencing with the issuance of the Certificate of Conformity and continuing for ten (10) years thereafter.
- iii. As to the mechanical, electrical, and plumbing elements, a warranty for a period commencing with the issuance of the Certificate of Conformity and continuing for three (03) years thereafter.

(2) The Contractor, all sub-contractors and suppliers shall be deemed to have granted to the Developer and to the purchaser of each condominium parcel and to his/her successor an implied warranty of fitness for purpose and of merchantable quality as to the work performed or materials supplied by them commencing from the date of issuance of the Certificate of Conformity and continuing for a period of three (03) years thereafter.

Sec. 12 - This section refers to a unit owner or owners subdividing the unit or amalgamating the unit with, possibly an adjoining unit. Therefore, there cannot be any changes to Common Elements as Common Elements are jointly owned. In this instance, it is more important to add to this section the following: **“approval of the Management Corporation of the condominium property need to be obtained”**.

Sec. 13 (amendment allowing Developer to enter into adjoining land as proposed by the Committee) - I do not agree to this amendment as these are matters that the CMA and its Committee of representatives from UDA/Municipal councils and professionals need to review and consider when granting approval for an application proposing the construction of a condominium property. **In Australia and Canada, the Council seeks public comments if the project is in a residential area or close to another property.** The distance between buildings in the case of piling for tall buildings, the soil condition, etc is considered before granting approval. If we incorporate the suggested amendment, any Developer who has not even obtained a Building Permit can arbitrarily enter the neighbor's property to erect scaffoldings. These are matters which require careful consideration.

Section 20A – The following amendment to the said section is important since the Share value is also used to subdivide the residue (land) of a condominium property (upon termination or destruction) among the former unit owners. Need to add the following addition as Sec. 20A (2) - “ (d) The distribution of the residue of the condominium property among the owners of all condominium parcels in the subdivided building”.

Share Value allocation should correspond to the involvement in maintenance costs. For example, in a commercial section, even if a condominium parcel is smaller than a residential unit, it will lead to comparably higher maintenance costs due to the higher amount of garbage generated, use of electricity and water, etc. Similarly residential units on a higher floor will lead to a comparably higher maintenance cost due to the use of the lifts. These aspects need to be considered and weights given to such usages in addition to the floor area which in Sri Lanka is the sole requirement for share value calculations. Please check the methods used in Singapore and Malaysia which follow the system mentioned above.

1. The following can replace Section 9 (3) as amended by Sec. 13 of Act No. 39 of 2003 –
“The share value which each owner of a condominium parcel has in the common elements shall be a fraction or percentage of undivided interests in the common elements adding up to 100% or 100. The allocation shall take into consideration the square feet area of the condominium parcel, sale price of the condominium parcel, the floor level at which the condominium parcel is located and whether it is used for residential or commercial purposes and state the formula used to establish the allocations. The formula shall use weight factors to ascertain maintenance costs proportionate to the expected use or benefit that the owner will derive from the common element or common amenity.”

Section 20B – Subsidiary Management Corporations - A subsidiary Management Corporation can be created only by a Special Resolution passed at a General Meeting of a Management Corporation and it should be for a specific area of the condominium property (i.e. commercial section or residential section or office section) The subsidiary Management Corporation should strictly work within the powers granted by the MC. Reference to this entity need to be brought under the section covering Management Corporations. This is the method adopted in Singapore where they have subsidiary MCs for the various sections of a condominium property. The powers of the Subsidiary Management Corporation need to be defined, otherwise the sub MC may even transfer portions of the Common Elements as the MC has power to do so subject to a Special Resolution. It needs to be mentioned that the Sub MC will always be under the overall management of the Management Corporation of the condominium property. While sub MCs are established to raise revenue from its commercial unit owners who causes higher maintenance costs, sub MCs should not unnecessarily restrict residential unit owners from benefiting from certain facilities within the commercial element, for example Corridors, accessways, etc., The limited Common Elements coming within the purview of the sub MC must be clearly defined.

Prior to the establishment of a Subsidiary Management Corporation, the Developer should have obtained approval for the demarcation of Common Elements as **Limited Common Elements** as depicted in the plan of subdivision (Condominium Plan) allocating each such Limited Common Element for a designated area of the condominium property. i.e. commercial element, residential element or office element. Such demarcation should be known to the prospective purchasers as the decision to purchase a condominium unit in such a property will also depend on the rights of using its Common Elements. The prospective purchasers should know which Common Elements are restricted and which are not. The limited Common Elements need to be identified at the time the Condominium Plan is drawn up and to ensure transparency, the purchasers need to be enlightened about such Limited Common Elements and the operation of Subsidiary Management Corporations.

It needs to be mentioned that the ‘subsidiary Management Corporation’ shall cease to exist upon the passing of the unanimous resolution (or Comprehensive Resolution, as decided) and all its assets and liabilities shall be vested with the Management Corporation. This needs to be mentioned in Sec. 20(Q) (14) which refers to the dissolution of the Management Corporation.

The following need to be added –

1. The sub title of **Section 20B** to be amended by replacing ‘Constitution of the Management Corporation’ with “**Management Corporation and transition of Developer’s powers**”
Section 20B (3) as amended by Section 27 of Act No. 39 of 2003 shall be amended as follows:

- (a) Within thirty (60) days of the registration of the Condominium property and the concurrent establishment of the Management Corporation or after the execution of the first Deed of Transfer or the registration of the first Certificate of Title effectively transferring title of a condominium parcel to a prospective buyer, whichever comes first, the Developer shall inform in writing to the Condominium Management Authority to convene the First Annual General Meeting.
- (b) At the first Annual General Meeting, the representative of the Condominium Management Authority shall appoint a Council which shall consist of all the owners of condominium parcels who have acquired ownership under Deeds of Transfer / Certificates of Title (as the case may be) but subject to the limitations imposed under paragraph 3 (1) and (2) of the First Schedule to this Law.
- (c) At the first Annual General Meeting, the Developer shall handover to the Council all original documents pertaining to the condominium property, such as, but not limited to; original registered Deed of Declaration and original approved Condominium Plan, original title deeds and original plan relating to the land upon which the condominium property is situated, all original insurance policies, all original warranties and guarantees of equipment, apparatus, devices and machinery installed within and upon the condominium property including the Developer's Warranties in respect of the structure, building, electrical and mechanical fixtures and fittings, list of owners of condominium parcels along with the share values assigned to the said condominium parcels, and all other documents affecting the condominium property which are necessary for the proper management, maintenance and administration of the condominium property. The Developer shall keep the Council informed in writing of any changes to the list of condominium parcel owners consequent to the execution of new conveyances of condominium parcels.
- (d) Subsequent to the holding of the First Annual General Meeting the Secretary of the newly appointed Council shall open a Register of Condominium parcel owners and record the parcel number assigned share value, name of owner, mortgagee (as applicable), addresses, contact details, etc., and shall maintain the said Register revising data as and when a change occurs during the lifetime of the condominium property.
- (e) Not later than the sixty (60) days after conveyance of fifty percent (50%) of the condominium parcels to owners other than agents, family members, subsidiaries or associated companies of the Developer, the Council shall convene an extraordinary general meeting and propose for adoption at that meeting a resolution to reconstitute the Council by the appointment of not less than half of the vacancies of the Council with condominium parcel owners who are not connected with the Developer or controlled or influenced by the Developer as a family member or as an agent, subsidiary or associated company of the Developer.
- (f) A Developer who fails to comply with sections 20B (3)(a), (c), and (d) and (e) at the first Annual General Meeting and at a subsequent Extraordinary General Meeting (as applicable), shall be guilty of an offence and punishable under Sec.....
- (g) A Managing Agent appointed by the Developer shall not hold office for more than two (02) years from the date of the first Annual General Meeting, unless the members at a general meeting approve by ordinary resolution the extension of such contract and thereafter approve its extension at each successive Annual General Meeting. In the event, under special circumstances as approved by the General Manager of the Condominium Management Authority, the Managing Agent appointed by the Developer holds office for more than two (02) years, then such Managing Agent shall be obliged to confirm at each Annual General Meeting that the service charge or maintenance fees levied from the condominium parcel owners are commensurate with the expenses incurred for maintenance of the common elements of the condominium property.

Section 20J – The following need to be incorporated as a new revised section:

1. Add the following new section **20 (J) (...)** titled “**Lien over condominium parcel**” -
“If an owner of a condominium parcel defaults in the obligation to contribute to the common expenses by failing to pay or delay in the payment of service charges, the Management Corporation shall have a lien against the owner’s condominium parcel and its appurtenant common elements for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the Management Corporation in connection with the collection or attempted collection of the unpaid amount. The Council of the Management Corporation shall give ten (10) days written notice to the defaulting owner before registering the lien on the condominium parcel at the relevant Land Registry/ Title Registry (as the case may be). The lien shall thereupon be an encumbrance on the defaulting owner’s condominium parcel and shall be cancelled only upon the payment of all amounts due and payable to the Management Corporation”.

Section 20Q - This needs to be amended as follows:

(1)“The condominium status of a subdivided building depicted in a Condominium Plan shall be deemed terminated upon the adoption of a unanimous resolution by the condominium parcel owners of the entire condominium property to terminate the condominium registration due to any one or more of the following reasons:

- (a) If the subdivided building is destroyed wholly or partially making it impracticable to re-built;
- (b) If the subdivided building needs to be replaced with a new building with better facilities for the unit owners
- (c) If the unit owners desire to accept an offer for the land parcel to divide the sale price among themselves.”

We need to consider a situation where a unit owner cannot be found or is dead and the heirs have not taken over the assets. But during that time if there is a need to terminate a condominium property it will not be possible to do so, due to the failure to get a unanimous resolution. In Singapore, they have a type of resolutions called “Comprehensive Resolution” which requires 90% approval of the unit owners for this type of an act.

Section 21 - To add as a new sub section –

1. To incorporate the following new section as **Section 21 (5)** sub titled “Mediation of disputes” as there are many minor disputes which when referred to the Condominium Management Authority takes a long time for resolution while parties living under the same roof live with resentment until their problem is addressed. Mediation is the best method to provide an amicable solution.
2. Suggested provision:
“ Disputes between condominium parcel owners, Management Corporation and condominium parcel owners or non-condominium parcel owners, in which the matter in controversy has either no specific monetary value or a value of Rupees Five Million or less, including disputes relating to the levying and collection of assessments, or arising out of violations of the bylaws or rules and regulations of the Management Corporation, shall be submitted for mediation to a neutral Mediator acceptable to the parties, which shall be conducted at the premises of the Management Corporation of the condominium property. The Mediator’s role is to aid the parties to resolve the dispute through discussion and negotiation. The Mediator shall decide on the rules for mediation and shall take all necessary steps to conclude the mediation within three (03) months from the date the dispute was referred for mediation. In the event it cannot be concluded during a period of three months pursuant to this section, the parties to the dispute shall be at liberty to seek remedies at any other forum or refer the dispute to the Condominium Management Authority for a resolution.”

It would also be advisable to have a standard rule incorporated in the Act for arbitration of condominium disputes if Mediation fails. Such Arbitrations need to be conducted at a neutral venue with people trained in condominium property law to act as Arbitrators. The requirement should be for a speedy resolution of disputes with minimum cost.

The other important matters which need to be addressed -

1. Registration of Sales Agreements of proposed condominium parcels.

2. Registration of Tripartite Agreements of Banks relating to proposed condominium parcels.

Current situation -

1. Hundreds of sales agreements and Tripartite Agreements are registered on the main land (Volume/Folios) along with Mortgage Bonds in proposed condominium projects in spite of the requirement to register a Provisional Condominium Property, making it a severe encumbrance on the property and a nightmare for title searches.

Possible solution -

2. This problem will be addressed if a provision is brought into the Condominium Management Authority Act (please refer my comments above) to require all notarially executed Sales agreements and Tripartite Agreements prepared in compliance with the approval granted by the CMA for the proposed condominium project, to be submitted for endorsement to the CMA, which endorsement shall give the instrument due recognition as evidence in a court of law. It can be incorporated as a new Section to the CMA Act with a corresponding section brought into the Apartment Ownership Law.

These Agreements do not transfer title and are only contractual documents which are necessary to pursue litigation if executed in accordance with the provisions of the Prevention of Frauds Ordinance. By amending the CMA Act and requiring the same to be registered at the CMA with an endorsement by the said Authority, it gives an opportunity for the CMA to monitor compliance by Developers. At present, Sales Agreements are signed and registered at the Land Registry but there is no monitoring by the Regulator. When registered at the Land Registry, these remain as encumbrances on the main land until cancelled or terminated. It is not possible to register Sales Agreements or Tripartite Agreements of Provisional condominium units at Title Registries since the proposed unit is not recognized as a completed condominium unit with a transferable title.

Other matters that need to be addressed:

The Accessory parcel connected to the condominium parcel need to be mentioned in the Deed, otherwise the unit owner cannot claim any rights over the Accessory Parcel. However, if the Condominium Plan shows that the said Accessory Parcel is connected to the condominium parcel and the Notary failed to mention that in the Deed, then it can be rectified by a Deed of Rectification. This amendment refers to a possible notarial error and therefore, it is not necessary to amend the Act – There are no share value allocations for Accessory Parcels since these are not habitable areas of a condominium property. i.e. car park allotment, a garden area, etc. However Surveyors have failed to note this and continue to allocate share values for Accessory Parcels based on the Survey Department Regulations. It is necessary to amend the Survey Department Regulations to correspond with the applicable law.

CONSOLIDATION OF THE NEW AMENDED VERSION

To amalgamate the principle enactment and amendments into one consolidated statute -

Amalgamate Apartment Ownership Law No. 11 of 1973 and its amendments (i.e. Apartment Ownership (amendment) Act No. 45 of 1982 and Apartment Ownership (amendment) Act No. 39 of 2003) **into one statute.**

- a. The following provisions of the principle enactment, Apartment Ownership Law No. 11 of 1973 have been repealed by subsequent amendments to the Law, hence in the **amalgamated Act** these sections should be removed and replaced with the amended version appearing in Act No. 45 of 1982 or Act No. 39 of 2003 (as applicable).

- Sec. 2, 3, 5, 6, 8, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20

- b. Certain provisions of the Apartment Ownership (amendment) Act No. 45 of 1982 (Especially Sec 20B, 20C, 20D, 20G, 20H, 20J, 20K, 20P, 20Q) are amended in Act No. 39 of 2003, hence in the **amalgamated version of the law**, these sections should be removed and replaced with the amended version appearing in Act No. 39 of 2003.
There are other cosmetic amendments, where the words “unit”, “units” appearing in Act No. 45 of 1982 are replaced with the words “parcel”, “parcels” in Act No. 39 of 2003.

It is necessary to revert back to the phrase “condominium plan” as found in Act No. 45 of 1982 and remove reference to provisional condominium plan” and “semi condominium plan”

- c. The amended new version should show in a Schedule all such amendments that have been made to the principle enactment and to the subsequent amendments for ease of reference. **There should be only one consolidated version of the law.**

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