

**A BILL**

**ENTITLED**

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

[ ]

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

**1.** This Act may be cited as the Registration (Strata Titles) (Amendment) Act, 2013, and shall be read and construed as one with the Registration (Strata Titles) Act (hereinafter referred to as “the principal Act”) and all amendments thereto.

Short title and construction.

Amendment  
of section 4 of  
principal Act.

2. Section 4 of the principal Act is amended in subsection (5), by deleting the words “the corporation” and substituting therefor the words “the Commission”.

Amendment  
of section 5A  
of principal  
Act.

3. Section 5A of the principal Act is amended by deleting subsection (2) (e), and substituting therefor the following—

“(e) that the proprietor, if aggrieved by the amount stated in the notice as the contribution owing by the proprietor, may lodge an appeal if the proprietor has paid at least fifty percent of the contribution owing as shown on the statement of account provided by the corporation for the strata lot.”.

Insertion of  
new section  
5EA in  
principal Act.

4. The principal Act is amended by inserting next after section 5E, the following as section 5EA—

“Proceedings  
on certificate  
of Title being  
cancelled,  
*etc.*”

5EA.—(1) In the circumstances specified in subsection (2), the corporation may apply to the Registrar of Titles to cancel the certificate of title (hereinafter called the “former certificate of title”) for any strata lot within the corporation’s responsibility and to register a certificate in duplicate in the name of the registered proprietor or the transferee under the corporation’s power of sale, in place of the former certificate of title and duplicate.

(2) The corporation may make an application under subsection (1) where—

- (a) the corporation has exercised or intends to exercise its power of sale;
- (b) the corporation has never had custody of the duplicate certificate of title and needs to produce title to the purchaser;
- (c) the corporation has, by notice issued in accordance with section 5F, requested the duplicate certificate of title from the

registered proprietor, any mortgagee or any other person whom the corporation has reason to believe may have custody of the duplicate certificate of title; and

- (d) the duplicate certificate of title is not produced at the end of fourteen days after service of the request.

(3) An application made under subsection (1) shall include proof to the satisfaction of the Registrar of Titles by statutory declaration of the corporation with exhibits in support evidencing that, before making the application, the corporation first requested in writing, the production of the duplicate certificate of title from the registered proprietor, mortgagee or any other person whom the corporation has reason to believe may have custody of the duplicate certificate of title and the request was not complied with.

(4) Before disposing of an application under subsection (1), the Registrar shall first give at least fourteen days' notice of his intention to do so—

- (a) by publication at least once per week for two consecutive weeks, in at least one newspaper in daily circulation throughout Jamaica; and
- (b) in such other manner, if any, as the Registrar thinks fit.

(5) On proof being furnished to the Registrar in accordance with subsection (3), and on the expiration of the notice periods referred to in subsection (4) without cause being shown to the satisfaction of the Registrar against the application, the Registrar shall cancel the former certificate of

title and register such new certificate in duplicate in the name of the registered proprietor or the transferee under the corporation's power of sale, in place of the former certificate of title and duplicate.

(6) An application made under subsection (1) may be combined with an application under section 81 of the Registration of Titles Act to dispense with the production of the duplicate certificate of title.

(7) For the avoidance of doubt, subject to this section, an application under this section shall for all intents and purposes be processed in accordance with sections 81 and 82 of the Registration of Titles Act.”.

Amendment of  
section 5G of  
principal Act.

5. Section 5G of the principal Act is amended by deleting subsection (2).

**MEMORANDUM OF OBJECTS AND REASONS**

In 2009, the Registration (Strata Titles) Act was amended primarily to improve the ability of the strata corporations to manage, control and administer the common property and resolve disputes in connection with such properties.

Since then it has become patently clear that the new provisions requiring a corporation to first obtain vacant possession of the property before it is able to exercise its power of sale, is unreasonable and operates to counteract the effectiveness of the provisions of the Act to enforce against non-payment of maintenance charges.

This Bill therefore seeks to—

- (a) remove the mandatory requirement that the corporation apply to the Court to obtain vacant possession;
- (b) make the process more efficient, by allowing for the cancellation of the existing certificate of title in the circumstances where the strata corporation has exercised its power of sale and the corporation and the purchaser under the sale have never had custody of the duplicate certificate of title, and facilitating the issue of a new certificate of title for the purchaser.

The opportunity is also being taken to amend section 5A of the Act to make it clear that the amount owing in maintenance contributions is that which is shown on the statement of account provided by the strata corporation.

ROBERT PICKERSGILL  
Minister of Water, Land,  
Environment and Climate Change.

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Titles) Act.**

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As introduced by the Honourable Minister of Water, Land,  
Environment and Climate Change.

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SECTIONS 4 AND 5A OF THE PRINCIPAL ACT WHICH  
IT IS PROPOSED TO AMEND

4.—(1) The proprietors of all the strata lots contained in any strata plan shall, upon registration of the strata plan, become a body corporate (hereafter referred to as “fee corporation”) under the name “The Proprietors, Strata Plan No.       ” (with the appropriate number of the strata plan inserted in the blank space).

(2) The corporation shall have perpetual succession and a common seal and be capable of suing and being sued in its name.

(3) The provisions of any enactment providing for the incorporation, regulation and winding-up of companies shall not apply to the corporation.

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

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

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

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...

...

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

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

- (a) of the outstanding amount of the contribution owing by the proprietor and the period for which the contribution is owed, outlined in a related statement of accounts;
- (b) of the amount of interest accruing on the contribution and the period for which interest is payable, outlined in a related statement of accounts;
- (c) that the proprietor is required, within thirty days from the date of the service of the notice, to pay the outstanding contribution and

- the amount of interest, if any, accruing thereon;
- (d) that if the outstanding contribution and interest accrued thereon are not paid within the period specified under paragraph (c) or make suitable arrangements to pay that amount, the corporation may sell the strata lot by public auction or by private treaty in accordance with section 5C(4);
  - (e) that the proprietor, if aggrieved by the amount of contribution stated in the notice, may lodge an appeal if he has paid at least fifty percent of the amount owing or such other amount as may be agreed with the corporation.

#### SECTION 5E OF THE PRINCIPAL ACT

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

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

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

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

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

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

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

- (a) whether there has been a default in payment of contribution;



- (b) whether notice has been served or otherwise; or
- (c) the propriety or regularity of such sale.

(7) The Registrar of Titles upon the production of a transfer made in professed exercise of the power of sale, shall not be concerned or required to make any enquiry in relation to the exercise of the power of sale.

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

SECTION 5G OF THE PRINCIPAL ACT WHICH  
IT IS PROPOSED TO AMEND

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

- (a) for a period exceeding sixty days, contribution have not been paid in respect of that strata lot;
- (b) all efforts to locate the proprietor of the strata lot have been unsuccessful; and
- (c) the corporation intends to rent the strata lot to recover the amount outstanding as contributions to the corporation until the proprietor or his agent—
  - (i) is found; and
  - (ii) has paid all the amount outstanding and has resumed his obligations with respect to the contributions.

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

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

