ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER F57

FRACTIONAL OWNERSHIP ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 17/2019, in force 3 June 2019

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FRACTIONAL OWNERSHIP ACT

PART 1

PRELIMINARY

Interpretation

1. In this Act—

"common expenses" means the expenses properly incurred for the maintenance, operation, repair and improvement of a fractional parcel, including any fees in connection with those matters payable to a strata corporation or an HOA;

"descriptive statement" means a description of a fractional interest scheme as required by this Act;

"developer" means the person creating a scheme and includes a private owner creating a scheme in respect of a single parcel;

"electronic service" means service in accordance with section 4 of the Electronic Transactions Act;

"executive committee" means the executive committee of the fractional corporation, appointed under the fractional by-laws;

"fractional by-laws" means the relevant by-laws in relation to a fractional interest as contained in Schedule 2, or the by-laws adopted by the fractional proprietors under section 8;

"fractional corporation" means a corporation created under section 6;

"fractional interest" means a registered interest in a fractional parcel, held by one or more persons as proprietors in common and conferring a usage right limited in time as provided in the fractional by-laws;

"fractional interest register" means a register created in accordance with section 4;

"fractional interest scheme", hereinafter referred to as the "scheme", is a plan for the development and management of land under this Act for dividing the ownership of land into no more than 10 fractional interests;

"fractional manager" means the person appointed by a fractional corporation to manage a fractional parcel both as between co-proprietors of the parcel and in relation to the strata corporation of HOA, as the case may be;

"fractional parcel" means a parcel of land that is registered as subject to a fractional interest scheme;

"fractional proprietor" is a person registered under this Act as the proprietor of a fractional interest;

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"Homeowners' Association (HOA)" means, in relation to a fractional parcel that is not a strata lot but is part of a building scheme, the association or entity specified in any restrictive agreement registered as an incumbrance on the title to the parcel as the body entitled to levy common expenses upon or enforce the terms of the restrictive agreement against homeowners or lot owners in that scheme;

"land" includes land covered with water, all things growing on land, and buildings and other things permanently affixed to land;

"land register" means the Land Register compiled under Division 2 of Part 2 of the Registered Land Act;

"Minister" means the Minister with responsibility for lands;

"property" in relation to a fractional interest scheme, means the land to which the scheme relates, and anything attached to or placed on the land;

"purchaser" means a person who is buying or who has bought a fractional interest in a scheme;

"Registrar" means the Registrar of Lands appointed under section 6 of the Registered Land Act;

"seller" means a developer or any other person, or agent or employee of the person, who has a fractional interest for sale to the public in the ordinary course of business, and includes a person who has acquired a fractional interest for that person's own occupancy and later offers it for re-sale;

"strata by-laws" means by-laws for the regulation of a strata lot made pursuant to the Condominium Act;

"strata corporation" means the body corporate constituted in the manner provided for in section 15 of the Condominium Act;

"unity of seisin" means the possession of land by freehold.

PART 2

FRACTIONAL INTEREST SCHEMES

Nature of a fractional interest scheme

2. (1) Every fractional declaration shall—

(a) state the registration section, block and parcel to which it refers and be described as a fractional interest scheme;

(b) specify the number of fractional interests in the parcel (not being more than 10) to be created;

(c) identify the proposed initial fractional manager of the scheme;

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(d) contain a statement of the covenants and charges that affects the land;

(e) contain a copy of the operations agreement which must detail: usage, occupancy, re-sales and transfers;

(f) contain any other condition that affects operations of the fractional proprietorship; and

(g) contain any other particulars and be accompanied by any other documents that are prescribed.

(2) If the scheme is created in respect of a parcel that is a strata lot, the Condominium Act continues to apply to the parcel and the lots.

(3) If a scheme is created in respect of a single parcel, which is not subdivided into strata lots, Schedule 1 applies as regards easements, administration and destruction of the buildings.

(4) The proprietor of the fractional parcel that is the subject of the scheme when it is registered is deemed for all purposes to be the proprietor of every fractional interest that has not been registered in the name of another fractional proprietor.

(5) A scheme can be amended by a fractional corporation on application to the Registrar, for example to vary the number of fractional interests.

(6) A scheme can be de-registered on the application of the fractional corporation where—

(a) all the fractional interests are bought by one of the fractional proprietors so as to achieve unity of seisin; or

(b) the scheme relates to a non-strata parcel, where the main residence is destroyed within the meaning of paragraph 14 of Schedule 1.

Registration of a scheme

3. (1) Subject to this Act, a proprietor of land may apply to the Registrar in the prescribed manner for the registration with respect to that land of the fractional interest scheme under the Registered Land Act.

(2) If the Registrar is satisfied that an application for registration of a fractional interest scheme is in compliance with subsection (1), the Registrar shall—

(a) register the scheme; and

(b) open a new land register in respect of each fractional interest established by the scheme.

(3) In respect of the register relating to the fractional parcel, the Registrar shall—

(a) in the property section, record that the land comprised in it is the subject of a fractional interest scheme; and

(b) in the proprietorship section, delete the name of the proprietor and state that the parcel is subject to fractional interest scheme and refer to the fractional interest registers.

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(4) When a scheme has been registered, any fractional interest included in it may devolve or be transferred, leased, charged or otherwise dealt with in the same manner and form as land, under the Registered Land Act, but is subject to subsection 4(3).

(5) Notwithstanding the Registered Land Act, the registered fractional proprietor of each fractional interest holds the interest subject to the provisions and limitations set out in the fractional by-laws applicable to the scheme under which the fractional interest has been established.

Fractional interest registers

4. (1) Subject to subsection (2), the register opened by the Registrar in accordance with section 3 in respect of each fractional interest shall record—

(a) all the particulars recorded in the property section of the land register relating to the fractional parcel, including usage rights;

(b) the proprietor of the parcel as the first proprietor of that fractional interest; and

(c) the incumbrances noted in the incumbrances section of the land register relating to the parcel.

(2) If the Registrar is satisfied that any such particulars of incumbrances do not apply to the fractional interest, the Registrar shall omit them from the register relating to that fractional interest and record the reason for the decision.

(3) A fractional interest is deemed—

(a) for the purposes of the Registered Land Act to be a parcel;

(b) for all purposes of law to be land;

but is not itself capable of being the subject of a scheme.

(4) Fractional proprietors in a scheme are deemed to be proprietors in common of the fractional parcel concerned, subject to limited usage rights as provided in the fractional by-laws.

Co-proprietorship

5. (1) Sections 106(2), 107(1), 108(2), 109, 110 and 111 of the Registered Land Act do not apply to fractional interests registered under this Act.

(2) A fractional proprietor—

(a) is entitled to possess, use and deal with the fractional interest and with the fractional parcel subject to the fractional by-laws applicable to the scheme;

(b) may, on death, have his or her fraction administered by his or her estate; and

(c) may dispose of his or her fraction without the consent of the other fractional proprietors but in accordance with the fractional proprietorship declaration.

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PART 3

FRACTIONAL CORPORATION AND FRACTIONAL BY-LAWS

Fractional Corporation: Registration and Powers

Effect of registration of Declaration

6. (1) Upon the registration of a scheme, the proprietors of all the fractional interest in the scheme become a corporate body (known as "the fractional corporation") under the name "The Proprietors, Fractional interest scheme No. [ ]" and the registration number of the fractional interest scheme shall be inserted in the brackets.

(2) A fractional corporation constituted under this Act has perpetual succession and a common seal, and shall be capable of suing and being sued in its name.

(3) Any enactment providing for the incorporation, regulation and winding-up of companies does not apply to the fractional corporation.

Duties and powers

7. (1) If the fractional interest scheme relates to a strata lot, the fractional corporation is for all purposes of the Condominium Act deemed to be the proprietor of the strata lot and shall comply with the obligations imposed by that Act on such proprietors.

(2) If the scheme does not relate to a strata lot, the fractional corporation is, for all purposes which require a legal person as the owner of property, deemed to be the proprietor of the fractional parcel, and is subject to any HOA restrictive agreement and restriction relating to the land, and any relevant HOA memorandum and articles of association, and the following provisions of this section apply.

(3) In the circumstances described in subsection (2), the fractional corporation shall—

(a) insure and keep insured the property to the replacement value thereof against fire, hurricane, earthquake and similar risks unless the fractional proprietors by unanimous resolution otherwise decide;

(b) effect any other insurance that is required by law to effect;

(c) insure against such other risks as the fractional proprietors may by special resolution determine;

(d) pay premiums on any policies of insurance effected by it;

(e) apply insurance monies received by it in respect of damage to the property in rebuilding and re-instating it so far as is lawful to do;

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

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(g) recover from any fractional proprietor any sum of money expended by the fractional corporation for repairs or work done by it or at its direction in complying with notices or orders issued by any competent public authority or relevant HOA;

(h) pay all rates, taxes and assessments imposed by or under any written law on the corporation in respect of the scheme or the property;

(i) establish a separate fund, sufficient in the opinion of the corporation for the control management and administration of the property, for the payment of any premiums of insurance, for the establishment of reserves for capital improvements or renewals or for any other obligations of the corporation;

(j) raise the amounts of money so determined by levying contributions on the fractional proprietors in proportion to the number of their respective interests; and

(k) employ such staff as may be deemed necessary to carry out its duties.

(4) Subject to subsection (6), any contribution levied pursuant to subsection (3) is due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, and may be recovered as a debt by the fractional corporation from the fractional proprietor entitled at the time when the resolution was passed and from the fractional proprietor entitled at the time when the action is instituted, jointly and severally.

(5) The fractional corporation shall, on the application of a fractional proprietor or a person authorised by him in writing, certify—

(a) the amount of any contribution determined as the contribution of that proprietor;

(b) the manner in which such contribution is payable; and

(c) the extent to which such contribution has been paid by that proprietor, and, in favour of any person dealing with that proprietor;

and the certificate shall be conclusive evidence of the matters certified in it.

(6) The fractional corporation may recover from any fractional proprietor, by any action that an individual can take, any sum of money expended by the corporation for work done by it or at its direction in complying with any notice or order by a competent public authority in respect of that portion of the scheme which constitutes or includes the fractional interest of that proprietor.

Fractional by-laws

Status of fractional by-laws

8. (1) Subject to this Act—

(a) any strata by-laws applicable to the fractional parcel;

(b) any applicable HOA restrictive agreement and restriction or any relevant HOA memorandum and articles of association;

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(c) the control, management, administration, use and enjoyment of the parcel and of the fractional interests contained in a scheme; and

(d) the funding of expenses in relation to the parcel and the scheme;

are regulated by its fractional by-laws.

(2) A fractional corporation shall adopt fractional by-laws at the first meeting of the corporation after registration of the scheme, and shall register the by-laws with the Registrar in the prescribed manner as soon as reasonably practicable.

(3) A resolution to amend a fractional by-law requires the approval of fractional proprietors who hold two-thirds of the fractional interests of the scheme, unless a higher majority is provided for in the by-laws.

(4) No amendment or variation of any fractional by-law has effect until notice of it has been given to the Registrar in the prescribed form and the Registrar has noted the amendment or variation on the relevant registered scheme and in the relevant fractional interest register.

(5) The fractional by-laws for a scheme bind the fractional proprietors of that scheme to the same extent as if the by-laws contained covenants on the part of each proprietor with every other proprietor to observe and perform all the provisions of the by-laws.

(6) Subject to any contrary provision in the by-laws, fractional by-laws may be enforced by the fractional manager in the name of the fractional corporation and on behalf of the fractional proprietors.

(7) The fractional corporation shall, on the application of a fractional proprietor or any person authorised by him in writing, make available for inspection the fractional by-laws for the time being in force.

Contents of fractional by-laws

9. (1) The fractional by-laws shall set out—

(a) the rights of the fractional proprietors to use the property;

(b) their respective rights and obligations to each other in that regard and with respect to costs and expenses relating to the property; and

(c) any other matters that the fractional corporation considers appropriate.

(2) The fractional by-laws shall include—

(a) rules and procedures for remedying a failure to comply with the requirement to pay a contribution under section 7(3);

(b) rules establishing the rights of fractional proprietors to the use of the property according to a schedule or upon a first reserved, first served, priority system;

(c) rules regarding the use of the property by persons other than the fractional proprietors;

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(d) rules and procedures for the use of the property for transient accommodation or other income-producing purposes during periods of non-use by the fractional proprietor; and

(e) rules and procedures in the event of condemnation, requisition, compulsory purchase or destruction of, or extensive damage to, a fractional parcel, including disposition or application of insurance proceeds, damages or compensation payable on account of or as a result of any of those matters.

(3) The fractional by-laws shall include provision about the—

(a) appointment of an executive committee of the fractional corporation;

(b) appointment of a fractional manager;

(c) keeping of records and accounts of the corporation;

(d) voting rights of the fractional proprietors;

(e) calling of meetings;

(f) percentage of the fractional interests that is required to pass any resolution.

(4) The fractional by-laws may stipulate that the fractional manager may, in relation to a fractional proprietor who is in breach of them—

(a) deny that proprietor access to the fractional parcel for as long as the default continues; and

(b) cause electrical, water, telecommunications and other utility services to the parcel to be suspended while the defaulting proprietor occupies the parcel.

(5) Schedule 2 contains by-laws relating to the duties of fractional proprietors and the fractional corporation and the executive committee and other matters which shall form part of the fractional by-laws of every fractional interest scheme unless and until amended or replaced by the corporation.

(6) Subject to section 8, the fractional corporation may amend or replace any of the by-laws in Schedule 2, provided the requirements of this section as to the contents of the by-laws are met.

PART 4

PROTECTIVE PROVISIONS

Descriptive statement

10. (1) Within 14 days after registration of a fractional interest scheme, the developer shall file with the Registrar and publish in the *Gazette* a descriptive statement of the scheme.

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(2) The descriptive statement shall set out—

(a) the name and address of the developer and an address in Anguilla for enquiries;

(b) the name and location of the scheme;

(c) an explanation of the form of ownership that is being offered; and

(d) a general description of the scheme, including the number of fractional interests that are to be part of the scheme and the usage rights that are to be attached to such interests.

(3) The general description of the scheme under subsection (2)(d) shall include—

(a) a survey plan showing the perimeter of the horizontal surface of the land and the perimeter of the buildings together with the floor layout of each unit in the building; and

(b) a statement of any easements or interests appurtenant to the land that are included in the property.

(4) The descriptive statement required by subsection (1) shall also contain—

(a) a statement of where a copy of the proposed by-laws can be inspected and obtained;

(b) a statement that other charges may be payable under the Condominium Act (if applicable) and for the running of the fractional corporation;

(c) a statement of the usage rights proposed for each fractional proprietor; and

(d) any other information or matter required by a form prescribed for the purpose of this section.

(5) If the Registrar is satisfied that a descriptive statement filed under subsection (1) complies with this section, he shall so certify on the register of the fractional parcel.

(6) If the developer fails to file a descriptive statement that complies with this section within 14 days of registration of the fractional interest scheme (or any longer period the Registrar for sufficient reason allows in any particular case), the registration is void.

Amendment of descriptive statement

11. (1) If the Registrar considers that a descriptive statement filed under section 10 is incomplete or inaccurate in any respect, the Registrar may in writing direct the developer to amend the statement and file and publish the amendment, within a time specified in the direction.

(2) If the developer fails to make, file and publish the amendment within the time specified in the direction, the descriptive statement is of no effect and no transfer of a fractional interest in the scheme to which it relates can lawfully be effected.

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(3) A developer may, without a direction of the Registrar, amend a descriptive statement published pursuant to subsection (1), but—

(a) any variation shall comply with the requirements of section 10; and

(b) the variation shall be filed and published in the manner required by subsection (1) as soon as practicable and the developer shall bring same to the notice of any prospective purchaser.

(4) If the Registrar is satisfied that an amendment of a descriptive statement filed under this section complies with section 10, he shall so certify on the register of the fractional parcel.

Effect of no descriptive statement

12. (1) A developer who offers for sale any fractional interest shall, before completing or purporting to complete any such sale, file and publish a descriptive statement that complies with section 10.

(2) A developer who completes, or purports to complete the sale of a fractional interest in contravention of subsection (1) commits an offence and is liable on summary conviction to the penalty set forth in the Regulations.

(3) A person other than the developer who enters into a contract for sale of a fractional interest shall in writing inform the intending purchaser—

(a) that a descriptive statement relating to the scheme can be inspected at the Land Registry; and

(b) of any material and substantial departure from the descriptive statement of which the seller has actual knowledge.

(4) If—

(a) a developer or seller fails to comply with subsection (1) or (3) respectively; or

(b) there is a material and substantial departure from the descriptive statement;

the purchaser may, in addition to any other course of action or legal remedy or recourse available, serve notice upon the developer or seller cancelling the contract before completion, whereupon the developer or seller shall immediately refund or return all sums, negotiable instruments and any other thing of value that has been received from the purchaser under the contract or in consideration of it having been made, with interest at 6%.

Promotional material

13. (1) It is an offence for any promotional material for a scheme to—

(a) misrepresent any material facts regarding the scheme;

(b) misrepresent the financial investment made by the developer or to be made by a purchaser;

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(c) misrepresent the size, nature, extent, qualities, or characteristics of the fractional parcel and other facilities of the scheme;

(d) misrepresent the amount or period of time during which the parcel will be available to any purchaser;

(e) misrepresent the nature or extent of any services incidental to the scheme; or

(f) make any misleading or deceptive representations with respect to—

(i) the contents or effect of the descriptive statement, or

(ii) the contract or purchasers' rights and obligations under the contract or this Act.

(2) It is an offence for any promotional device for a scheme, including any sweepstake, lodging certificate, gift award, premium, discount, drawing, or display booth, to be used without a disclosure that—

(a) the promotional devices are being used for the purpose of soliciting sales of fractional interests; and

(b) the promotional devices are being used to obtain the names and contact details of prospective purchasers, and that any names and contact details so obtained may be used for the purpose of soliciting sales of fractional interests.

(3) A developer who commits an offence under subsection (1) or (2) is liable on summary conviction to the penalty set forth in the Regulations.

(4) In this section "promotional material" includes—

(a) promotional brochures, pamphlets, advertisements, or other material, including electronic material, to be disseminated to the public in connection with the sale of fractional interests;

(b) transcripts of radio and television advertisements; and

(c) transcripts of standard verbal sales presentations.

Rights of cancellation

14. (1) A purchaser of a fractional interest has the right to cancel the contract without any penalty or obligation within 7 days after signing the contract.

(2) A purchaser may also cancel a contract at any time before completion of the sale as provided by section 12(4).

(3) A purchaser who wishes to cancel a contract shall—

(a) notify the seller in writing of the intention to cancel; and

(b) serve the notice of cancellation, which takes effect when delivered or deemed to be delivered, in accordance with section 21.

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(4) A seller shall—

(a) not misrepresent in any manner the purchaser's right to cancel;

(b) honour the request of a purchaser to cancel a contract if the request is made as provided in this section; and

(c) within 20 days from receipt of the notice of cancellation, refund all payments made by the purchaser under the contract and return all negotiable instruments, other than cheques, executed by the purchaser in connection with the contract.

Contents of a contract

15. (1) A seller shall provide to every intending purchaser of a fractional interest a complete copy of the proposed contract relating to the sale, including—

(a) a statement of the date on which the contract is to be executed;

(b) the name and address of the seller and the identity of the fractional parcel to which the fractional interest relates;

(c) the total financial obligation of the purchaser, including the initial purchase price, an estimate of any stamp duty payable, and any additional charges to which the purchaser may be subject;

(d) if the parcel is not ready for occupation, the date on which it is expected the parcel will be completed and ready for occupation; and

(e) a copy or summary of the by-laws (including a copy of the occupation schedule that is proposed).

(2) The contract shall contain, above the space for the signatures, and in more prominent lettering than the body of the contract, the declaration specified in Schedule 3.

(3) The contract shall also contain a statement—

(a) that oral representations cannot be relied upon and that the seller makes no representations other than those contained in the contract and the descriptive statement;

(b) that, if the purchaser cancels the contract within 7 days, the seller will refund to the purchaser all payments made under the contract within 20 days after receipt of notice of cancellation; and

(c) that, if the purchaser cancels after the 7-day cancellation period, but before the sale is completed, the refund will be the total amount of all payments made by the purchaser under the contract, reduced by the amount of any quantifiable benefit the purchaser actually received or had the right to receive under the contract during the time preceding the date when the cancellation becomes effective.

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(4) The descriptive statement relating to a scheme forms part of the contract of sale of every fractional interest in the scheme.

PART 5

MANAGEMENT OF THE PROPERTY

Fractional manager

16. (1) Upon the coming into being of the fractional corporation (by registration of the scheme), the corporation shall appoint and maintain the appointment of a fractional manager, which may be any individual (including a fractional proprietor), or any corporate body (including the developer), or any combination of those.

(2) The fractional manager of a scheme is the agent of the fractional corporation and shall act in accordance with any directions given by the corporation.

(3) Subject to any directions given under subsection (2), the fractional manager shall perform all the functions of the fractional corporation as its agent, and shall—

(a) manage and maintain the property;

(b) present to the executive committee for approval an itemised annual budget for common expenses, including all receipts and expenditures;

(c) collect the contributions payable by fractional proprietors;

(d) maintain books and records concerning the corporation and make them reasonably available for inspection by any fractional proprietor, or his authorised agent;

(e) maintain a complete list of all fractional proprietors, with their contact details, and make the list available to other fractional proprietors on request;

(f) comply with any reasonable request for the names and addresses of the members of the executive committee;

(g) make available for inspection by the Registrar any books and records of the corporation upon request;

(h) make a copy of every policy of insurance in effect for the scheme available for reasonable inspection by every fractional proprietor or his authorised agent;

(i) schedule occupancy of the fractional parcel in accordance with the fractional by-laws, so that all fractional proprietors have proportionate use of the parcel and of the facilities on the property; and

(j) perform any other functions and duties that are necessary and proper to the scheme.

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(4) The appointment of a fractional manager may be revoked at any time by resolution of the fractional corporation (subject to any law relating to employment if the manager is an employee of the corporation).

(5) For the purposes of the Condominium Act, the voting rights attaching to a fractional parcel in any strata plan shall be exercised by the fractional manager in the name of the fractional corporation and on behalf of the fractional proprietors.

(6) A fractional manager shall have and maintain an address for service on Anguilla.

(7) Any notice that is to be served under the Condominium Act or pursuant to any strata by-laws, any applicable HOA restrictive agreement and restriction, or any relevant HOA memorandum and articles of association, with respect to a fractional parcel, is deemed to be validly served if served on the fractional manager of the scheme.

(8) A corporation that fails to appoint a fractional manager as soon as practicable after the scheme is registered commits an offence and is liable on summary conviction to the penalty set forth in the Regulations.

(9) A fractional manager that fails to maintain an address on Anguilla commits an offence and is liable on summary conviction to the penalty specified in the Regulations.

PART 6

MISCELLANEOUS PROVISIONS

Sale of interest

17. (1) A fractional proprietor who proposes to sell, assign, or otherwise transfer his interest shall give written notice of his intention to the fractional corporation at least 14 days before the transaction is concluded.

(2) The fractional corporation shall, on being notified under subsection (1), notify all the other fractional proprietors of the intention as soon as reasonably practical.

(3) The giving of a notice under this section does not affect the obligation of the transferee to register the transfer under the Registered Land Act.

Insurance by fractional proprietors

18. (1) If a fractional parcel is insured to its replacement value, a fractional proprietor may effect a policy of insurance in respect of any damage to his fractional interest in a sum equal to the amount secured, at the date of any loss referred to in such policy, by charges charged upon his fractional interest.

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(2) If such a policy of insurance is in force, then, subject to the terms and conditions of the policy, the insurer is liable to pay under it to the chargees whose interests are noted on it in order of their respective priorities—

(a) the value stated in the policy;

(b) the amount of the loss; or

(c) the amount sufficient, at the date of the loss, to discharge charges charged upon the fractional interest;

whichever is less.

(3) If a fractional parcel has been insured for less than its replacement value, a fractional proprietor may—

(a) effect a policy of insurance in respect of any damage to his fractional interest in a sum equal to his fractional interest less any amount for which his fractional interest is insured under any policy or insurance effected on the parcel; or

(b) despite any existing policies, effect a policy of insurance in respect of damage to his fractional interest in a sum equal to the amount secured at the date of any loss referred to in the policy by charges charged upon his interest, and subsections (2), (3) and (4) shall apply in respect of any payment pursuant to such policy as they apply to a policy effected pursuant to subsection (1).

(4) For the purpose of subsection (3), the amount for which a fractional interest is insured under a policy of insurance effected in respect of the fractional parcel is to be determined by multiplying the value stated in the policy by the market value of the fractional interest and dividing the product so obtained by the number of fractional interests.

(5) Nothing in this section limits the right of a fractional proprietor to insure against risk other than damage to his fractional interest.

Voting by chargees

19. If a fractional proprietor's interest is subject to one or more registered charges and a chargee has, or chargees have, issued a Statutory Notice to the chargor and a copy of the Statutory Notice has been served on the fractional corporation, any power of voting conferred on a fractional proprietor by or under this Act—

(a) shall not, in any case where a unanimous resolution is required, be exercised by the proprietor but shall be exercised by the chargees in succession in accordance with their priorities; and

(b) may in any other case be exercised by the chargee first entitled in priority and thereafter by chargees next entitled in succession, and shall not be exercised by the proprietor when any such chargee is present personally or by proxy.

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Powers of Registrar

20. (1) The Registrar has the power to enforce and ensure compliance with the provisions of this Act and in performing that duty may—

(a) make any necessary public or private investigations in Anguilla or elsewhere to—

(i) determine whether any person has violated this Act, or

(ii) aid in the enforcement of this Act;

(b) require or permit any person to file a written statement under oath or otherwise as to the facts and circumstances concerning a matter under investigation; and

(c) without affecting other remedies available to purchasers or fractional proprietors, institute proceedings to enforce this Act against any developer, seller, fractional manager, fractional corporation, or other person.

(2) Subsection (1) does not affect the powers of the Registrar under the Registered Land Act, the Condominium Act or any other Act, whether enacted or to be enacted, in their application to fractional parcels or fractional interests.

Service of documents

21. A document that is required to be served by or under this Act may be served by hand or by electronic service, or by displaying it in a prominent place on the land to which the document relates.

Absent voting

22. (1) A fractional proprietor who is entitled to vote at a meeting of a fractional corporation, but is not able to attend the meeting in person, may either appoint a proxy to attend and vote at the meeting or vote by electronic means, if facilities to do so are available.

(2) A member of an executive committee may attend and vote at meetings of the committee by electronic means, if facilities to do so are available.

(3) In this section, "electronic" has the same meaning as in the Electronic Transactions Act, that is, (relating to technology) having electrical, magnetic, optical, electromagnetic, or similar capabilities, whether digital, analogue or otherwise.

Regulations and forms

23. (1) The Minister may make regulations generally for the proper carrying out of the purposes and provisions of this Act and in particular, without limiting that power, may make regulations—

(a) as to the manner and form of registering schemes and fractional interests;

(b) as to the form of a descriptive statement;

(c) as to notification of an amendment of by-laws;

(d) as to insurance of a fractional parcel;

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(e) prescribing the fees to be paid for anything required or permitted to be done under this Act;

(f) prescribing the value of land which may be the subject of a fractional interest scheme, provided that such regulations are laid before the House of Assembly at its next meeting immediately following the date that they come into operation; and

(g) prescribing any other matter or thing which may be or is required by this Act to be prescribed, including penalties and charges.

(2) Forms that are not prescribed by regulations under subsection (1) may be approved by the Registrar.

Citation

24. This Act may be cited as the Fractional Ownership Act, Revised Statutes of Anguilla, Chapter F57.

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SCHEDULE 1

(Section 2(3))

PROVISIONS APPLICABLE WHERE NO STRATA TITLE

Disposition of fractional parcel

1. The fractional proprietors may by unanimous resolution direct the fractional corporation to transfer or lease the parcel or any part of it.

2. If the fractional corporation is satisfied that the resolution was duly passed and that all persons having interests, of which the corporation has notice, in the parcel have consented in writing to the release of those interests in the land comprised in the proposed transfer or lease, the corporation shall execute the appropriate transfer or lease and such transfer or lease is valid and effective without execution by any person having an interest in the fractional parcel, and the receipt by the corporation of the purchase money, rent or other money payable to the corporation under the terms of the transfer or lease is a sufficient discharge and exonerates all persons taking under the transfer or lease, as the case may be, from any responsibility for the application of the moneys expressed to have been received.

3. Every such transfer or lease lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the fractional corporation that the resolution referred to in subparagraph (1) was duly passed, that the transfer or lease conforms with the terms of it and that all necessary consents were given; and the certificate is, in favour of purchasers of the parcel and in favour of the Registrar, conclusive evidence of the facts stated in it.

Creation of easements and covenants in a fractional parcel

4. The fractional proprietors may by unanimous resolution direct the fractional corporation—

a. to execute on their behalf a grant of easement or a restrictive agreement burdening the fractional parcel;

b. to accept on their behalf a grant of easement or a restrictive agreement benefiting the parcel.

5. If the fractional corporation is satisfied that the resolution was duly passed and that all persons having interests, of which the corporation has notice, in the parcel have consented in writing to the release of those interests in respect of the land comprised in the parcel, the corporation shall execute the appropriate transfer or agreement, and the transfer or agreement is valid and effective without execution by any person having an interest in the parcel, and the receipt of the corporation for any money payable to it under the terms of the transfer is a sufficient discharge and exonerates all persons taking under the transfer from any responsibility for the application of the moneys expressed to have been so received.

6. Every such transfer or agreement lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the fractional corporation that the resolution referred to in paragraph 4 was duly passed and that all necessary consents were given, and the certificate is, in favour of persons dealing with the corporation pursuant to this paragraph and in favour of the Registrar, conclusive evidence of the facts stated in it.

Administration of a fractional parcel

7. The fractional corporation or any person having an interest in the fractional parcel, or, with the leave of the court, any other person, may apply to the court for appointment of an administrator.

8. The court may in its discretion on cause shown appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit.

9. The administrator, to the exclusion of the fractional corporation, has the duties and powers of the corporation or such of those duties and powers as the court orders.

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10. The administrator may delegate any of the powers vested in him by virtue of paragraph 9 of this Schedule.

11. The court may in its discretion on the application of the administrator or any person referred to in paragraph 7 remove or replace the administrator.

12. On an application made under this section the court may make such order for the payment of costs as it thinks fit.

Destruction of the main residence comprising a non-strata fractional parcel

13. If the main residence comprising a non-strata parcel is destroyed—

a. the fractional corporation shall forthwith lodge with the Registrar, in a form approved by the Registrar, a notification of such destruction and apply for de-regulation of the scheme;

b. the Registrar shall, upon receipt of the notification, make an entry of it on the registered scheme;

c. the proprietors of all the fractional interests contained in the scheme are entitled to the parcel as tenants in common in shares proportional to the number of their fractional interests and paragraphs 1 and 2 of this Schedule apply in relation to the transfer or lease of the parcel and to the creation of any easement or restrictive agreement burdening or benefiting it.

14. For the purposes of this Schedule the main residence referred to in paragraph 13 is destroyed—

a. when the fractional proprietors by unanimous resolution so resolve; or

b. when the court is satisfied that having regard to the rights and interests of the fractional proprietors as a whole it is just and equitable that the building be deemed to have been destroyed and makes a declaration to that effect.

15. If a declaration has been made pursuant to paragraph 14(b) the court may by order impose such conditions and give such directions for the payment of money as it thinks fit for the purpose of adjusting, as between the fractional corporation and the fractional proprietors and amongst the proprietors themselves, the effect of the declaration.

16. An application for a declaration under paragraph 14(b) may be made to the court by the fractional corporation or by a fractional proprietor or by a registered chargee of a fractional interest.

17. On any application to the court for a declaration under paragraph 14(b), any insurer who has effected insurance on the parcel or on any part of it (being insurance against destruction of fractional interests or damage to the parcel) has the right to appear in person or by an attorney.

18. The court may, on the application of the fractional corporation or any member of it or the administrator by order make provision for the winding-up of the affairs of the corporation and may, by the same or a subsequent order, declare the corporation dissolved as on and from a date specified in the order.

19. On an application under this section the court may make such order for the payment of costs as it thinks fit.

20. The court may from time to time vary any order made by it under paragraph 15 or 19.

Court's power if main residence on a fractional parcel damaged

21. If the main residence on a non-strata parcel is damaged, but not destroyed, the court may by order settle a scheme, including provisions—

a. for the reinstatement of the building in whole or in part;

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b. for transfer to the other fractional proprietors in proportion to the market value of the interests of proprietors of fractional interests which have been wholly or partially destroyed.

22. In exercise of its powers under this paragraph, the court may make any order as it thinks necessary or expedient for giving effect to the scheme, including orders—

a. directing the application of insurance moneys received by the fractional corporation in respect of damage to the building;

b. directing payment of money by the fractional corporation or by fractional proprietors or by any one or more of them;

c. directing an amendment of the fractional interest scheme as the court thinks fit, so as to include in the parcel any alterations to it;

d. imposing such general terms and conditions as it thinks fit.

23. For the purposes of this paragraph, an application may be made to the court by the fractional corporation, or by a fractional proprietor or a registered chargee of a fractional interest, or, with the leave of the court, by any other person.

24. On an application to the court under this paragraph, any insurer who has insured the parcel or any part of it against destruction of fractional interests or damage to the parcel has the right to appear in person or by an attorney.

25. The court may from time to time vary any order made by it under this paragraph.

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SCHEDULE 2

(Sections 8 and 9)

FRACTIONAL BY-LAWS

Note: The following by-laws shall form part of the by-laws of every fractional interest scheme unless and until amended or replaced by the fractional corporation under section 9(6).

Proprietors of fractional parcels

1. A proprietor of a fractional parcel shall—

   a. permit the fractional corporation and its agents, at all reasonable times on notice (except in the case of emergency, when no notice is required), to enter the parcel for the purpose of maintaining, repairing or renewing the property, ensuring that the by-laws are being observed;

   b. pay all rates, taxes, charges, outgoing and assessments that may be payable in respect of his interest;

   c. jointly with other proprietors of the parcel, through the corporation, repair and maintain the property, and keep it in a good state of repair, except for reasonable wear and tear, and damage by fire, storm, tempest or other natural cause;

   d. use and enjoy the property in such a manner as not unreasonably to interfere with the use and enjoyment of it by other fractional proprietors or their families or visitors;

   e. not use the property or permit it to be used in a manner or for a purpose that will cause a nuisance or hazard to the occupier of any other parcel (whether a proprietor or not) or the family of such an occupier;

   f. notify the corporation forthwith upon any change of ownership or of any change or other dealing in connection with his interest.

The fractional corporation

2. The fractional corporation, by itself or through the fractional manager, shall—

   a. control, manage and administer the property for the benefit of all fractional proprietors;

   b. where practicable establish and maintain suitable lawns, shrubs, trees and gardens on the parcel;

   c. keep in a state of good and serviceable repair and properly maintain (including renewal where reasonably necessary) fixtures and fittings on the parcel;

   d. on the written request of any fractional proprietor, produce to the proprietor, or any person authorised in writing by him, the policy or policies of insurance effected by the corporation, and the receipt or receipts for the last premiums in respect of them.

3. The fractional corporation may—

   a. purchase, hire or otherwise acquire personal property for use by the fractional proprietors;

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b. borrow moneys required by it in the performance of its duties or the exercise of its powers;

c. secure the repayment of moneys borrowed by it, and the payment of interest thereon, by negotiable instrument, or charge of unpaid contribution (whether levied or not), or charge of any property vested in it, or by a combination of those means;

d. employ persons to provide services on or in the property;

e. do all things reasonably necessary for the enforcement of the by-laws and the control, management and administration of the property.

General Meetings

4. A general meeting of fractional proprietors shall be held within 3 months after registration of the fractional interest scheme.

5. Subsequent general meetings (hereafter referred to as annual general meetings) shall be held one in each year:

Provided that not more than 15 months may elapse between the date of the first general meeting and the date of the first annual general meeting and the date of one annual general meeting and that of the next.

6. All general meetings other than the annual general meetings are extraordinary general meetings.

7. The fractional corporation may whenever it thinks fit and shall upon a request in writing made by proprietors holding 25% of the fractional interests convene an extraordinary general meeting.

8. At least 14 days' notice of every general meeting, specifying the place, the date and the hour of meeting and, in case of special business, the general nature of such business, shall be given to all fractional proprietors (and any registered first chargees who have notified their interests to the fractional corporation); but accidental omission to give such notice to any proprietor (or to any registered first charge) or non-receipt of such notice by any proprietor does not invalidate any proceedings at any such meeting.

9. All business is to be deemed special that is transacted at—

a. an annual general meeting, with the exception of the consideration of accounts; or

b. an extraordinary general meeting.

10. Unless otherwise provided in these by-laws, no business is to be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. Proprietors holding at least 50% of the fractional interests present in person or by proxy constitute a quorum.

11. If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the persons present and entitled to vote constitute a quorum.

12. At the commencement of a general meeting, a person to preside at the meeting shall be elected.

The Executive Committee

13. There shall be an executive committee of the fractional corporation which, subject to any restriction imposed or direction given at a general meeting, exercises the powers and performs the duties of the corporation.

14. The executive committee shall consist of not less than 3 fractional proprietors and shall be elected at the first general meeting of the fractional corporation and thereafter at each annual general meeting:

Provided that if there are not more than 3 fractional proprietors, the executive committee consists of all the fractional proprietors.

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15. Unless the executive committee consists of all the fractional proprietors, the fractional corporation may by resolution at an extraordinary general meeting remove any member of the executive committee before the expiration of his term of office and appoint another fractional proprietor in his place, to hold office until the next annual general meeting.

16. Any casual vacancy on the executive committee may be filled by the remaining members of the committee.

17. The quorum of the executive committee is a number the committee decides from time to time, being not less than one-half the number of members of the committee.

18. At the commencement of each meeting the executive committee shall elect a person to preside at the meeting, and if any person so elected ceases to preside during the meeting the committee shall elect another person to preside.

19. At meetings of the executive committee all matters shall be determined by simple majority vote and the person presiding has an additional casting vote in any case in which the voting is equal.

20. Subject to these by-laws the executive committee may regulate its own procedure.

21. The executive committee may—

a. employ as it thinks fit, for and on behalf of the fractional corporation, servants or agents in connection with the control, management and administration of the property and the performance of the functions of the corporation;

b. subject to any restriction imposed or direction given at a general meeting, delegate to one or more of its members any of its powers and duties as it thinks fit, and may at any time revoke such delegation.

22. The executive committee shall—

a. keep minutes of its meetings;

b. prepare proper accounts relating to all moneys of the fractional corporation, and the income and expenditure thereof, for each annual general meeting;

c. on the application of a fractional proprietor or a chargee or any person authorised in writing by either of them, make the books of account available for inspection at all reasonable times.

23. The validity of the proceedings of the executive committee is not affected by any vacancy among the members of it or by any defect in the appointment of a member.

Voting

24. At any general meeting—

a. a resolution requires a majority of those present, in person or by proxy, unless these by-laws require a unanimous vote on any matter;

b. a resolution of the meeting shall be decided on a show of hands unless a poll is demanded by any fractional proprietor present in person or by proxy.

25. Unless a poll is so demanded a declaration by the person presiding that a resolution has on the show of hands been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn.

26. A poll if demanded shall be taken in a manner the person presiding thinks fit and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.

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27. In the case of equality in the votes, whether on a show of hands or on a poll, the person presiding is entitled to a casting vote in addition to his original vote.

28. On a show of hands, each fractional proprietor has one vote; on a poll the votes of proprietors shall correspond with their respective fractional interests.

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

30. An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting. A proxy need not be a fractional proprietor.

31. Except in cases where by or under the Act a unanimous resolution is required, no fractional proprietor is entitled to a vote at any general meeting unless any outstanding contribution required under section 9(4) of the Act has been paid.

32. For the purposes of conducting a vote, the fractional manager shall provide to the executive committee, on demand, the names and addresses of the proprietors of all the fractional interests.

Use of common seal

33. The fractional corporation shall at the first general meeting held after registration of the scheme, and may from time to time at subsequent general meetings, determine how the common seal of the corporation is to be used.

Miscellaneous

34. A fractional proprietor shall not—

a. use his parcel for any purpose which is illegal or injurious to the reputation of the scheme or the building;

b. make undue noise in or about the parcel; or

c. keep any animal on the parcel after being in receipt of notice not to do so from the executive committee.

35. When the purpose for which a fractional parcel is intended to be used is shown expressly or by necessary implication on or by the registered scheme, the proprietors of the parcel shall not use it or permit it to be used for any other purpose.

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SCHEDULE 3

(Section 15(2))

CONTRACT DECLARATION

The following declaration shall be included in every contract or proposed contract that is given to every intended purchaser of a fractional interest. This declaration shall be placed above the signatures and shall be in a more prominent font than the body of the contract—

"You may cancel this contract without any penalty or obligation within 7 days from the date you sign this contract. You may also cancel this contract at any time before the sale is completed if there is no descriptive statement or you were not informed of it, or if there is a material and substantial departure from the statement.

If you decide to cancel this contract, you must notify the seller in writing of your intention. The notice of cancellation must be sent by hand or by electronic service to [name of seller] at [address of seller] and will be effective when delivered or deemed to be delivered. You should not rely upon representations by any person about this contract except for those included in this contract.".

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