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立法會 CB(2)3125/05-06(01)號文件
LC Paper No. CB(2)3125/05-06(01)

民政事務局局長：

《建築物管理條例》之“單位”登記冊

《建築物管理條例》(法例第344章)第38條規定業主立案法團須備存登記冊，將每個單位的有關資料分別列明，供業主或其他有關人士查閱。另外，法團須參照條例的附表11，計算業主的人數。

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現請局長(《建築物管理條例》的主管當局)就分契單位解答以下疑問(以協助法團運作)：——

1. 若大廈公契提述的單位F(註)被分割出售，成為分契單位F₁和F₂，登記冊應列載F₁和F₂(2個單位)，還是F(1個單位)？
2. 法團舉行業主大會時，分契售出的單位F₁和F₂應視作為2名業主，還是1名業主(祇考慮公契所提述的單位F)？

(註) 條例第2條訂明：“單位”(flat)指公契所提述建築物內的任何處所……

梁志強

2006年9月23日

副本送：

- ／ 立法會—民政事務委員會 張宇人議員
- 其他人士(稍後送出)

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38. 秘書保存登記冊

- (1) 管理委員會秘書須備存登記冊，將有關建築物的每個單位分別列明，並就每個單位填上以下詳情—
 - (a) 業主的名稱和地址；及
 - (b) 已登記承按人(如有的話)的名稱和地址。
- (2) 就第(1)款而言，除非業主或已登記承按人以書面將其他地址通知管理委員會秘書，否則—
 - (a) 業主地址須為業主所擁有單位的地址；而
 - (b) 已登記承按人地址須為已登記按揭契上所載的地址。
- (3) 任何人成為某一單位的業主或已登記承按人，須隨即通知管理委員會秘書，而秘書須據此而修訂登記冊。
- (4) 根據第(1)款備存的登記冊，須供主管當局、獲授權人員、租客代表、業主和已登記承按人或任何由業主或已登記承按人就此以書面妥為授權的人查閱。(由 1993 年第 27 號第 31 條代替)

38. Secretary to maintain register

- (1) The secretary of a management committee shall maintain a register, in which each flat in the building concerned shall be separately identified, and shall enter therein the following particulars with reference to each flat—
 - (a) the name and address of the owner; and
 - (b) the name and address of the registered mortgagee (if any).
- (2) For the purposes of subsection (1)—
 - (a) the address of an owner shall be the address of the flat which he owns; and
 - (b) the address of a registered mortgagee shall be his address appearing in the registered mortgage, unless the owner or registered mortgagee notifies the secretary of the management committee in writing of some other address.
- (3) Every person who becomes an owner or a registered mortgagee of a flat shall forthwith give notice thereof to the secretary of the management committee, who shall amend the register accordingly.
- (4) The register maintained under subsection (1) shall be open to inspection by the Authority, an authorized officer, the tenants' representative, an owner or a registered mortgagee or any person duly authorized in writing in that behalf by an owner or registered mortgagee. (Replaced 27 of 1993 s. 31)

“單位”(flat)指公契所提述建築物內的任何處所，不論公契以單位或其他名稱描述，也不論該處所乃用作居所、店舖、廠房、辦公室或任何其他用途，而該處所的業主，相對於同一座建築物其他各個部分的業主或佔用人而言，乃有權享有該處所的獨有管有權者；

“flat”(單位) means any premises in a building which are referred to in a deed of mutual covenant whether described therein as a flat or by any other name and whether used as a dwelling, shop, factory, office or for any other purpose, of which the owner, as between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession;

附錄 VII 《建築物管理條例》附表 11

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業主的百分率的計算

就第 5B 條而言——

- (a) 現指明第 40C(3)條及附表 3 第 1(2)及 5 段以及附表 8 第 11 段；
 (b) (a)段所指明的條文中所提及有關業主的百分率的計算，須根據以下方式作出——

| <u>業權的形式</u> | <u>舉例說明</u> | <u>須計算為</u> |
|------------------------------|---|---|
| 1. 1 個單位由多人共有的業權 | 3 名共有人擁有 1 個單位 | 1 名業主 |
| 2. 1 名業主擁有多於 1 個單位 | 1 名業主擁有 35 個單位 | 1 名業主 |
| 3. 1 名代表或多於 1 名代表獲多於 1 名業主委任 | (a) 1 名代表獲 100 名業主委任 (b) 35 名代表獲總共 100 名業主委任 | 投票權相等於獲業主有效委任為代表的數目。在舉例說明的個案中，則為 100 名業主。 |

任何 2 人，可組成 3 名 $(2^2 - 1)$ 不同業主。
 任何 10 人，可組成 1023 名 $(2^{10} - 1)$ 不同業主。

40C. 專職處命委任建築物業管理代理人

- (1) 凡專職處命委任建築物業管理代理人之申請而獲得任何建築物業下地權情況—
 - (a) 儘管有根據第4條發出的命令，仍未有管理委員會根據第3、3A或4條委任，而且亦相當不可能有管理委員會根據該等條文委任；
 - (b) 該建築物業在當時是沒有人管轄的；及
 - (c) 主管當局對於該建築物業的佔用人或業主因(a)及(b)段提及的情況而處於或可能處於危險情況；

則專職處命委任建築物業管理代理人的命令必須在命令所指明的合理期間內召開業主會議，處理第(2)款所提述的事宜以管理該建築物業。

(2) 第(1)款所提述的事宜程序為—

- (a) 考慮通過決議委任管理委員會管理該建築物業，如認為適當的話，則通過該決議；
 - (b) 如沒有通過該決議，則考慮通過決議委任建築物業管理代理人管理該建築物業，如認為適當的話，則通過該決議。
- (3) 即使公契(如有的話)有任何相反的規定—
- (a) 如在第(2)(a)款的目的召開的有達到不少於業主意見(“會議法定人數”)的業主出席的業主會議上，親自出席或委託代表出席投票的業主以多數票通過贊成委任管理委員會的決議，則該款所指的決議委任管理委員會一事，須當作已完成；而該會議而言，在確定是否達到會議法定人數時，獲業主委託該決議投票的代表，須視作出該會議的業主計算；
 - (b) 如有下述情況，則第(2)(b)款所指的決議委任建築物業管理代理人一事，須當作已完成—
 - (i) 在業主會議上以(a)段所描述的方式通過贊成委任建築物業管理代理人的決議；或
 - (ii) 在沒有第(i)節所提及的決議通過的情況下，由名列於根據第(1)款作出的命令的業主委任該委任建築物業管理代理人。
- (4) 根據本條舉行的會議須按照第(3)(a)款召開，而該等會議的任何通知可由名列於根據第(1)款作出的命令的業主送達。

(由2000年第69號第19條增補)

40C. Appointment of building management agent by order of tribunal

(1) Where upon the application of the Authority it appears to the tribunal in the case of any building that—

- (a) a management committee has not been and is not likely to be appointed under section 3, 3A or 4, notwithstanding an order of the tribunal made under section 4;
- (b) no person is, for the time being, managing that building; and
- (c) the Authority is satisfied that by reason of the circumstances mentioned in paragraphs (a) and (b), there is a danger or risk of danger to the occupiers or owners of the building,

the tribunal may order that, within such reasonable period as shall be specified in the order, a meeting of owners must be convened by such owner as shall be named in the order to deal with the matters referred to in subsection (2) for the purposes of managing that building.

(2) The matters referred to in subsection (1) are, consecutively—

- (a) to consider and, if thought fit, to pass a resolution which appoints a management committee;
- (b) where that resolution is not passed, to consider and, if thought fit, to pass a resolution which appoints a building management agent,

for the purposes of managing that building.

(3) Notwithstanding anything to the contrary in the deed of mutual covenant, if any, the appointment of—

- (a) a management committee under subsection (2)(a) shall be deemed to be effected if at the meeting of owners convened under that subsection a resolution in favour of that appointment is passed by a majority vote of the owners voting either personally or by proxy at a meeting with a quorum of not less than 10% of the owners; and for the purposes of that meeting, any proxy appointed by an owner for the purposes of voting on that resolution shall be treated as being an owner present at the meeting for the purposes of establishing that quorum;
- (b) a building management agent under subsection (2)(b) shall be deemed to be effected if—

- (i) a resolution in favour of that appointment is passed at a meeting of the owners in the manner described in paragraph (a); or
 - (ii) where a resolution of the description mentioned in subparagraph (i) is not passed, by appointment, directly, by the owner named in the order made under subsection (1).
- (4) A meeting to be held under this section shall be convened in accordance with subsection (3)(a) and notice of any such meeting may be served by the owner named in the order made under subsection (1).

[Added 69 of 2000 s. 19]

附錄 II 《建築物管理條例》附表 3

法團會議及其程序

1. (1) 管理委員會須—

- (a) 在法團註冊成立之日起計 15 個月內召開法團的第一次業主周年大會；
- (b) 在第一次或前一次業主周年大會後不遲於 12 個月，但不遲於 15 個月，召開一次業主周年大會；
- (c) 就管理委員會認為恰當的事宜隨時召開法團的業主大會。

(2) 在不少於 5% 的業主要求下，管理委員會主席須在收到要求後 14 天內，就業主所指明的事宜召開法團的業主大會。

5. (1) 法團會議的法定人數—

- (a) 如會議有決議建議根據第 30 條解散管理委員會，須為全部業主的 20% 的人數；或
- (b) 如屬其他情況，須為全部業主的 10% 的人數。

(2) 在確定是否達到會議法定人數時，按照第 4 段獲委任代表業主在法團會議中投票的代表，須視作出席會議的業主計算。