

## **Resolution no. 7 of 2018 regulating owners' associations and joint properties**

### **Chapter 1 - General**

#### **Article 1 definitions**

Joint Property	Land or villa or building development with common areas
Accessory Unit	A unit shown in the Property Location Plan as an Accessory Unit that is capable of being transferred between Owners of units and for which a separate title deed will not issue
Articles of Association	A document in the form, and containing rules and regulations of the owners association relating to functions, meetings, voting and making decisions, specified by the Authority on the RERA website
Owners Association Manager	A natural or legal person licensed by the Authority to carry out Functions of owners associations and for the purposes of Article 68 of the Law includes the elected chairman of the board
Budget	An annual financial particular that is made for the purpose of ensuring that the owners association can carry out its obligations and functions according to best practice and including items that relate to the Operational Account and the Reserve Account
Common Area Plan	That part of a Property Location Plan that shows common areas inside and outside the building.
Entitlement	The percentage allocated to each unit in the common areas and used to determine the undivided share of common areas, the share of annual subscriptions and the value of votes.
Exclusive Use Area	Common areas shown in the Property Location Plan and described in the Joint Property By-Law allocated for the exclusive use of a unit or units
Clearance Certificate	A clearance certificate that the owners association shall issue to support the transfer of the title of the unit, confirming that there are no arrears of annual subscriptions.
Operational Account	The bank account to hold that part specified in the owners association Budget to fulfil the obligations that will be repeated on a regular and at least on an annual basis
Reserve Account	The bank account to hold that part of the owners association Budget for the costs long-term maintenance costs that are not on an annual basis

Operational Rules	Rules that are in the Joint Property By-Laws and have a more operational nature and that may be changed with an Ordinary Resolution by the general assembly.
Special Management Scheme	A special scheme for a Joint Property that that affects owners rights and obligations, powers and functions of the owners association created according to a Resolution on Special Management Schemes issued by the Authority.
Ordinary Resolution	A resolution of the general assembly passed in accordance with Article 53
Owner	The Owner of the unit included in the Joint Property
Special Resolution	The general assembly-approved resolution by the Owners entitled to vote and voting in person, by proxy or legal representative, or voting by voting paper or electronically, supported by Owners having at least 60% of the total entitlement and at least 60% of the units in the Joint Property
Works	Any works executed in the units that require authorisation from competent authorities or that affect the structural integrity of the units or any part of the Joint Property or affect the appearance of the Joint Property or that cause noise out of the unit the unit or that include materials or workmen disrupting or occupying the common areas
Supplementary Record Sheet	A record stating any particulars or documents affecting the common areas or all the units in a Joint Property.
Joint Property By-Laws	The document that is in the form required by the Authority and published on the RERA website that includes the ByLaws referred to in Law 27 of 2017
Statement of Annual Subscription	The annual subscription payable by the Owner of a unit as a contribution to the costs of managing, operating, maintaining, repairing and insuring the common areas and payable into the Operational Account and the Reserve Account
Unit	A unit defined in a Property Location Plan and may include non-contiguous parts
Base Plot	Plot of land divided in a Property Location Plan to establish a Joint Property
Order to Pay	The order by the owners association or the owners Association Manager to an Owner to pay arrears in annual subscriptions prior to an action in the competent court

## **Article 2 - Scope**

The provisions of this resolution shall apply to all Joint Properties, which shall include units and common areas, with the Owners owning the common areas in shares determined by their unit entitlements.

## **Chapter 2 - Registration of Joint Properties and Articles of Association and Joint Property By-Laws**

### **Article 3 – Plans to be registered**

The developer must register plans for Joint Properties according to the provisions of this Resolution.

### **Article 4 – Registering the Joint Property**

To register a Joint Property the developer must provide to the Bureau and the Authority the following:

1. The Property Location Plan consisting of:
  - a. A plan illustrating the location of the buildings in relation to the boundaries of the Base Plot
  - b. Common Area Plan identifying in general terms all common areas inside and external to the building
  - c. Exclusive Use Area plan illustrating areas over which exclusive use rights are to be created
  - d. Unit plan defining all units in the Joint Property
  - e. Accessory Units plan defining all Accessory Units in the Joint Property
  - f. Any easements and covenants affecting the common area
2. Schedules that show the following:
  - a. All Joint Property units and Accessory Units and their unit numbers
  - b. the areas of the units and Accessory Units, including a breakdown of internal and exterior areas
  - c. A detailed statement of what items have been included or excluded in calculating the area
  - d. The Entitlement of every unit including Accessory Units and the method used to determine the Entitlement.
  - e. the number of accessory units and the units that the accessory units are associated with
3. Joint Property By-Law that is in the form required by the Authority;
4. Changes and additions to the Articles of Association, provided that these comply with the provisions of Article 7; and
5. The documents required to support the registration of the Property Location Plan including:
  - a. The title deed for the land of the developer divided by the Property Location Plan
  - b. the consents of owners of real rights in the land in the title deed

- c. the discharge of any mortgage in relation to the common areas
- d. Such other documents as the authority shall require.

Nothing in this Resolution requires a developer to comply with the requirements of this Resolution if SLRB commenced registration procedures before the date of this Resolution.

#### **Article 5 – Special provisions for plans**

The unit plan in a Property Location Plan may show non-contiguous parts of a Unit.

#### **Article 6 - Property location plan**

- A. The developer must prepare a property location plan when establishing a Joint Property, and any part of the Base Plot that is not shown as a unit in the Property Location Plan of a Joint Property is presumed to be a common area.
- B. Where the Joint Property creates villa or land units, the Property Location Plan shall define the common area as a plot.
- C. in all circumstances, no accessory units shall remain under the ownership of the developer after the sale of all units.

#### **Article 7 – Articles of Association and Joint Property By-Laws**

There is an Articles of Association for all joint properties, specified by the Authority in its template on the website. The developer in preparing the Joint Property By-Law or the owners association after it becomes operational may amend or add special provisions to the Articles of Association provided that they are consistent with this Resolution and the template prepared for it. In all circumstances the changes require the consent of the Authority.

The Joint Property By-laws for all joint properties shall follow the format provided by the Authority. It shall be drafted by the developer to promote equitable management of the common areas and harmonious living among Owners and as far as possible to fairly balance the requirements of different uses and owners within the Joint Property guided by the Authority template on its website.

#### **Article 8 – Inclusion in Articles of Association**

- A. The owners association may specify a process in the Articles of Association to impose financial obligations on an Owner where the actions of the Owner result in costs to the owners association that should be borne by the owner rather than by all Owners.
- B. Without limiting the effect of clause A, the owners association may include in the process of recovery of costs to ensure that the Owner complies with the Joint Property By-Laws, the Articles of Association and Operating Rules.

### **Chapter 3 – Handover from the developer to the owners association**

#### **Article 9 – Developer’s obligation after the establishment of the owners association**

- A. The developer must send notice of the first general assembly to owners within 3 months from the establishment of the association according to the provisions of this Resolution and the Articles of Association.
- B. Where the Joint Property is a villa development that includes common areas and the owners association is created under Article 62A of the Law before the completion of the buildings on the plots the developer may delay calling the first general assembly until 10% of the units have completed buildings.
- C. After the establishment of the owners association and before the first annual general assembly the developer must:
  - i. Create the common seal of the owners association which shall contain (a) the registration number allocated to the owners association; (b) the name of the owners association set down in the Joint Property By-Laws and the words “owners association.”
  - ii. Prepare the first annual Budget for the owners association including the establishment within the Budget of the Operational Account and the Reserve Account.
- D. After the establishment of the owners association and before the first annual general assembly the developer may:
  - i. Tender for any goods or services required for the operation of the Joint Property provided that no contracts shall exceed two years unless the Joint Property is within a Special Management Scheme.
  - ii. Enter on behalf of the association into any contracts necessary for the operation of the Joint Property including a contract with an Owners Association Manager where appropriate.
  - iii. Open bank accounts in the name of the association for the deposit of annual subscriptions.

#### **Article 10 - Transferring the custody to the owners associations**

In the first general assembly meeting the developer must transfer into the custody of the owners association all the relevant documentation pertaining to the operation of the Joint Property including:

- i. As-built drawings
- ii. a list of all assets whether fixed or movable owned by the owners association
- iii. a full accounting of all annual subscriptions collected by the developer on behalf of the owners association;
- iv. copies of any construction contracts, design contracts, building consents, approvals and compliance certificates;
- v. any warranties assigned to the owners association
- vi. all instruction manuals, keys, codes and similar information;
- vii. a table setting out all Units, Owners and their addresses for service of notices;

- viii. originals of all tender documents, Budgets, service contracts, accounts, notices, agendas, minutes, resolutions and other documents entered into by or prepared in relation to the owners association;
- ix. all necessary documentation to transfer the operation of the owners association bank account into the management and control of the owners association; and including an accounting for all paid annual subscriptions paid by Owners
- x. copies of the Property Location Plans and Joint Property By-Laws registered by the Bureau; and
- xi. the common seal.

At the first general assembly the developer must provide details of all existing service contracts entered into by the developer and must disclose any interest that the developer has in those contracts, and provide a list of the units under management and the expiry date of the obligation where the developer has at the time of the general assembly an ongoing obligation to manage units under Article 34 of the Law.

#### **Article 11 - Maintaining the documentation**

The documentation in the previous Article must be stored securely on site at the Joint Property and the common seal must remain in the custody of the Owners Association Manager for the Joint Property or if no Owners Association Manager has been appointed then in the custody of the board member appointed as the secretary of the owners association.

#### **Article 12 - Remedying defects**

The developer at his expense shall be obliged to pursue any contractor or consultants for any defect or breach of any warranty in relation to the Joint Property in accordance with Article 71 of the Law and he shall remain liable to remedy a defect or breach of such warranties.

#### **Article 13 - Payment of annual subscriptions**

The developer shall be liable as an Owner to pay the annual subscriptions determined under the law and this resolution in relation to all units owned by the developer and he shall not have the right to notarise any SPA before the payment of arrears in annual subscriptions.

#### **Article 14 - Disqualifying the developer from voting**

The developer must disqualify himself from voting on any contracts for goods or services where the developer holds a stake in the provider of the goods or services.

The developer shall not have the right to vote on a decision that concerns a resolution to take action against him for his breach of his obligations.

#### **Article 15 - Developer's obligations on selling**

On any sale of a unit the developer shall provide the buyer with the following before the buyer signs the contract:

- i. A copy of the plan defining units and common areas;
- ii. A copy of the unit Entitlements particulars
- iii. A copy of the Joint Property By-Laws
- iv. A projection calculated on a reasonable basis of the next two years' annual subscriptions.
- v. Details of any Special Management Scheme applicable to the Joint Property.

- vi. Details of any arrears of service charge.
- vii. An undertaking by the developer to assist the buyer to obtain a Clearance Certificate.

#### **Article 16 - Collecting annual subscriptions before handover by the developer**

The developer has the right to collect two years' annual subscriptions before handing over the unit, provided that he deposits the funds in the owners association's Operational Account and Reserve Account.

### **Chapter 4 – Functions, Powers and Obligations of the owners association**

#### **Article 17 - Legal Personality**

An owners association shall have a separate legal personality from its Owners and has the right to sue in this name as an owners association and may be represented by the Owners Association Manager and if there is no Owners Association Manager by the chairman in front of the courts, administrative entities and when dealing with third parties.

Where the owners association is liable to make a payment under a judgment to compensate for a breach of its obligations the Owners shall contribute to the payment in shares determined by the Entitlement of their units.

#### **Article 18 – Functions of the owners associations**

In addition to the functions in the Law and in this Resolution, the owners association functions include the following:

- i. Supervision of common areas, assets and services according to the public benefit of the owners and managing and controlling it
- ii. Ensuring the maintenance of common areas and the repair of assets or replacement if repair is not economically sound
- iii. Keeping records according to Article 24 of this Resolution,
- iv. Maintaining insurance according to Articles 72 and 73 of the Law, Article 21 of this Resolution and the Joint Property By-Laws
- v. Promoting harmony and a sense of belonging among Owners and occupiers of units and managing disputes
- vi. Complying with any other obligations in the law.

#### **Article 19 – Powers of an owners association**

In addition to the powers in the Law and in this Resolution, the owners association has the following powers:

- i. To enter into utility supply and service agreements;
- ii. To make Operational Rules for the effective management of the Joint Property;
- iii. To set appropriate measures and mechanisms against Owners for a breach of the Articles of Association or Joint Property By-Laws or of any notice to the Owner requiring the Owner or the Owner's tenant, guest or occupier to comply with owners association requirements.
- iv. To remedy defective building work in relation to the Common Areas;

- v. To carry out work required by law or the Joint Property By-Laws or if the Owner has failed to do the work;
- vi. To collect annual subscriptions from Owners and to require payments in quarterly instalments;
- vii. To recover from the Owner of a unit the costs of carrying out work;
- viii. To enter a Unit upon reasonable written notice to the Owner or occupier, or without notice in an emergency, to inspect or effect repairs to Common Areas or the unit or to carry out work;
- ix. To enforce Owners' obligations under the Law, this Resolution or the Joint Property By-Laws;
- x. To sue and take judicial action to enforce monetary claims in its own name;
- xi. To effect insurances required by the Law, this Resolution, or the Joint Property By-Laws;
- xii. to deposit surplus funds for the achievement of owners association purposes and benefit of all owners in a bank registered with the Central Bank of Bahrain or any institution approved by the Authority in consultation with the Central Bank of Bahrain;
- xiii. To issue statements of annual subscriptions indicating the annual subscriptions payable in relation to the unit and to issue Clearance Certificates according to Article 27 of the resolution
- xiv. To own equipment, furniture and other assets consistent with its functions and powers.

#### **Article 20 - Leasing common areas**

The owners association shall have the right to lease any common areas provided the same does not materially impede the use and enjoyment of the common areas by the Owners and is approved by the general assembly by Ordinary Resolution and any rent received shall be paid into and form part of the Operational Account.

#### **Article 21 – Insuring owners associations**

The owners association must insure in its own name the following:

1. Buildings, assets and other improvements within the common areas under a comprehensive insurance policy against damage or destruction by explosion, fire, lightning, storm and tempest and water for:
  - i. their full replacement value; and
  - ii. the costs incidental to their replacement or reinstatement, including the cost of removal of debris and professional fees on re-building
2. against liability for damage to property or bodily injury to any person howsoever arising in relation to the Common Areas; and
3. against any other risk specified in the Law or in a direction of the Authority.

The owners association shall obtain an assessment every five years by a certified engineer or valuer to ensure the insurance policies adequately cover the above items.

#### **Article 22 - Recovering the amount of the increased premium**

If the way in which a unit is being used by an Owner or occupier results in an increased premium payable by the owners association then the owners association may recover the amount of the

increased premium from the Owner concerned. In all circumstances the proceeds of the insurance claim must be applied towards the reinstatement of the damage that resulted in the claim.

#### **Article 23 - Insuring private property**

Owners and occupiers shall be responsible for insuring their private property to the extent that it is not covered by any insurance effected by the owners association.

Owners of free standing buildings including buildings on villas or land plots that are not Common Area may obtain their own insurance.

#### **Article 24 - Owners association records**

An owners association must keep the following records:

- i. a record which contain the plan defining units and common areas and a copy of the Joint Property By-Laws including a particular of unit Entitlements
- ii. a written record of meetings of the board;
- iii. a written record of the general assembly meeting proceedings including resolutions and Minutes;
- iv. a record for official communications;
- v. record of insurance policies;
- vi. a record of all financial statements, audits and bank statements;
- vii. a register of contracts and agreements;
- viii. originals of all contracts and agreements;
- ix. a register of assets;
- x. an up-to-date roll of all Owners and their addresses for service;
- xi. an up-to-date record of the status of annual subscription payments; and
- xii. other records specified by the Authority.

#### **Article 25 - Ownership of records**

The owners association's records, whether in paper or electronic form, are the property of the owners association and must be returned to the owners association by the Owners Association Manager or board members at the end of their tenure. All records must be kept for at least seven (7) years.

#### **Article 26 - Changing the plans**

Any changes to the Property Location Plan or Joint Property By-Laws or additions to the Articles of Association must be approved by the Authority and registered by the Bureau for registration in the Special Register of Joint Properties.

#### **Article 27 - Clearance Certificate on transfer**

After six months from the date of the resolution, the Bureau shall not register a transfer of a unit where the initial contract for sale of the unit was entered into after the date of this Resolution until it has a Clearance Certificate for that unit unless the Parties jointly declare to the Notary that:

- i. they have attempted to obtain Clearance Certificate but the owners association being inactive or non-functional has failed to issue a certificate; and

- ii. An agreement has been made between the buyer and seller to cover any unpaid annual subscriptions so that the buyer is not adversely affected by the operation of Article 68A of the Law.

A transfer of an Accessory Unit does not require a Clearance Certificate.

#### **Article 28 - Operational Account and Reserve Account**

The owners association shall establish an Operational Account and a Reserve Account for the Joint Property and shall, unless exempted by the Authority, conduct every five years a study to identify maintenance activities to be funded from the Reserve Account over the next five years. Upon collection of annual subscriptions from Owners the share of the annual subscriptions allocated in the Budget pertaining to the Reserve Account shall be separated from the Operational Account.

#### **Article 29 - Easement Rights or leasehold obligations**

The owners association must comply with any easements or the obligations pursuant to any Special Management Scheme or leasehold or Musataha or agreements recorded in the Joint Property By-Laws or Supplementary Record Sheet.

#### **Article 30 – Order to pay**

- A. For the purposes of Article 68B of the Law, the Owners Association Manager, or the chairman in the case where there is no manager may serve an Order to Pay on an Owner by registered post or by email, under the seal of the owners association, requiring the Owner to pay the annual subscription within 90 days. A copy of the original notice to pay annual subscriptions and any subsequent notices shall be attached.
- B. For the purposes of Article 68B, the Order to Pay may include:
  - i. any arrears in annual subscriptions;
  - ii. any administrative fee imposed by the owners association for late payment pursuant to Article 59;
  - iii. financial obligations imposed on an Owner by the owners association pursuant to the Articles of Association.

### **Chapter 5 – The board**

#### **Article 31 – Appointing a board**

The owners association must elect a board in the annual general assembly meeting provided there are more than nine units. If there are nine or less units, the owners shall constitute the Board automatically. It shall comprise at least three and a maximum of nine members including the chairman, treasurer and secretary. The general assembly may appoint three supplementary members to fill any vacancies in the board.

#### **Article 32 - Resignation of a board member**

A member of the board may resign within his membership period without any obligation to appoint a new member provided that the remaining member shall be at least three members, failing which the owners association must call an extraordinary general assembly to choose the rest of the board members.

### **Article 33 - Board member conditions**

These are the conditions of the board members:

- i. Should be an Owner in the Joint Property
- ii. A resident in Bahrain
- iii. An Owner should not be represented by more than one member on the board
- iv. Should not be a convicted bankrupt in the five years before the nomination.
- v. They should disclose potential conflicts of interest that may arise if appointed to the board.

### **Article 34 - Voting and the term of the board**

The term of office of a board member is for two years starting from the date of election and expiring at the next general assembly meeting two years later. Voting on nominees for election to the board shall take place at general assembly. Each owner is entitled to vote for one candidate and shall have one vote per unit owned. Voting may be in person, by proxy, by legal representative by voting paper or by electronic means. Board members may serve successive terms.

In addition to the voting procedures for board members set out in this Article, the general assembly may by Ordinary Resolution add to the Articles of Association another voting process. The amendment to be effective must follow the procedures for registration in this Resolution.

### **Article 35 - Board member names certificate**

The Authority upon application by or on behalf of the owners association supported by evidence of a decision appointing board members at a general assembly meeting convened under the provisions of this resolution, shall issue a certificate that shows the names of the board members and the supplementary board members and shall record the names of the treasurer secretary and chairman and if available, the name of the appointed Owners Association Manager. The Authority shall update the certificate upon receipt of notification of any change in the particulars in the certificate.

### **Article 36 – Change of board certificate**

Where evidence of dismissal, resignation or other change to the membership of the board has been provided by the board or owners association, the Authority may amend a certificate to remove a board member dismissed by the owners association or issue a replacement certificate at the discretion of the board.

### **Article 37 - Board powers and functions**

- A. The board shall have full power and authority to perform the functions and powers delegated by the owners association according to the provisions of this Resolution except for the following:
  - i. approving the annual Budget;
  - ii. amending the Articles of Association and the Joint Property By-Laws
  - iii. approving remuneration for board members
  - iv. Other restrictions imposed by the owners association.
  
- B. The owners association or board according to the circumstances shall have the option of approving or terminating contracts that are concluded after the date of this Resolution contrary to Article 9 of this Resolution, and in case of termination the owners association or board or Owners Association Manager shall notify the contractor with a period of notice of not less than 3 months.

C. The owners association shall not be responsible to compensate the contractor in this case.

#### **Article 38 - Disclosing conflict of interests**

A board member must disclose any conflict of interests to the other board members and where appropriate to the owners association. If the other board members so require then the board member with the conflict of interest will refrain from voting on any issue related to the conflict of interests.

#### **Article 39 - Board Obligations**

The board must work to achieve the owners association benefits using reasonable diligence to ensure that the owners association fulfils its obligations under the law and this Resolution. Should the board and Owners Association Manager lack any expertise on a matter the board must engage the services of a person having sufficient knowledge and expertise.

#### **Article 40 – Board liability**

The board will be responsible for any losses that the owners association will face in the following circumstances:

- i. Due to any loss sustained by the owners association due to any fraud or dishonesty of the board member
- ii. Where a board member knowingly breaches any aspect of the law or this Resolution resulting in damage to the owners association
- iii. If the board member fails to disclose any conflict of interests in any matter prior to a vote on the issue resulting in a loss sustained by the owners association.

Subject to the above, board members shall not be personally liable for any act or omission in their role as board member for any action taken in good faith.

#### **Article 41 - Board meetings**

The board shall meet as regularly as is necessary in order for the board to fulfil its duties. Greater than half of the board members shall comprise a quorum. The board shall decide all matters by majority vote, and in all circumstances the decision must be in writing.

Each board member shall have one vote. A board member shall not be entitled to vote if he fails to pay annual subscriptions due at the time of the relevant meeting.

The board shall elect a chairman, secretary and treasurer and specify functions if not already specified by the owners association.

The elected chairman may chair meetings of the board and general assembly meetings unless the general assembly appoints a different person to chair the general assembly meeting.

#### **Article 42 - Functions of the secretary and the treasurer**

The functions of the secretary include the preparation and distribution of notices including notices of meeting, notices to comply with the Joint Property By-Laws, notices to owners to pay annual subscriptions and notices of board meetings, and issuing Clearance Certificates.

The functions of the treasurer include approving and issuing statements of annual subscriptions, preparing financial statements and annual Budgets.

### **Article 43 - Board Meeting notice**

The secretary will sign a written notice giving 14 days' notice of the board meeting to the board members. The notice period may be reduced if all members of the board agree in writing. The notice must include a detailed agenda for the meeting.

### **Article 44 – Appointing a Representative for as nominee for election to the board**

An owner that is a legal person may nominate one person as a representative to stand for election to the board.

Where a unit is owned by co-owners, one of the co-owners may be appointed to the board.

A developer owning more than one unit in the Joint Property may nominate one person to represent the developer to stand for election to the board.

## **Chapter 6 - General assembly meetings**

### **Article 45 – The general assembly**

The general assembly shall consist of the Owners, whether attending in person, by proxy or by a legal representative, or voting either electronically or by voting paper.

The general assembly may expel a board member by an Ordinary Resolution.

### **Article 46 - Annual general assembly meeting**

The general assembly of the owners association shall convene annually with a written notice sent to Owners at least 21 days before the date of the meeting.

### **Article 47 - General assembly notice provisions**

The notice must be given to all Owners and contain:

- i. the date, time and place of the general assembly
- ii. a detailed agenda which includes the following items
  - a) at the first general assembly, an item for the appointment of a chairperson to chair the general assembly;
  - b) an item for confirmation of the minutes of the previous general assembly;
  - c) an item for consideration of the annual financial statements;
  - d) an item for consideration of the Budget for the next financial year and annual subscription proposed in that Budget and dates payable during the year;
  - e) an item for the election of the board;
  - f) items required by the board;
  - g) an item requested by an Owner in writing to be included on the agenda;
  - h) any resolutions or motions proposed to be passed by the general assembly
  - i) any other matters of general business.

### **Article 48 - Documents to accompany the notice**

The notice is to be accompanied by the following:

- i. a copy of the minutes to be confirmed;
- ii. a copy of the annual financial statements;

- iii. a copy of the proposed Budget, including proposed annual subscriptions;
- iv. details of current insurance policies;
- v. a copy of any other documents reasonably required for the general assembly to consider the various agenda items;
- vi. a proxy form; and
- vii. a voting paper setting out the proposed resolutions.

#### **Article 49 - Extraordinary general assembly meetings**

An extraordinary general assembly must be convened in the following circumstances:

- i. if required by the Owners of not less than 25% of the units in the Joint Property;
- ii. if required by any two board members or the chairman;
- iii. if required by the Authority.

The notice of an extraordinary general assembly need not contain all the particulars required to convene the general assembly.

#### **Article 50 - Voting at a general assembly**

An Owner may vote in accordance with the provisions of this Resolution, and where a unit is owned by more than one person or owned by a company the voting shall be by proxy or by voting paper signed by the co-owners or by the legal representatives of the co-owners. In all circumstances no votes may be cast if annual subscriptions are overdue for the unit except on decisions requiring a Special Resolution or a resolution to terminate a Joint Property.

A person cannot hold proxies for more than 10% of the unit Entitlement of the Joint Property.

#### **Article 51 - Quorum**

The quorum for a general assembly shall be the Owners of 50% of the units in the Joint Property participating in person, by proxy, by legal representative or voting by voting paper or electronically. If a quorum is not present within one hour of the scheduled commencement time of the general assembly, the general assembly shall stand adjourned until the same time and place seven days later, and the Owners participating at that reconvened meeting shall constitute the quorum.

#### **Article 52 - Voting paper**

Without limiting Article 64(b) of the Law, voting at general assembly meetings may be by voting paper provided:

- i. service of the notice of meeting is by post or is through a notified email address;
- ii. the agenda and voting paper accompanying the notice of meeting list the resolutions to be voted on in the meeting
- iii. The owners mark on the voting paper the votes for or against the resolutions and sign the voting paper;
- iv. The owner returns the voting paper by post or email to the owners association so that it is received before the meeting; and
- v. all records of the meeting are retained;

#### **Article 53 - Ordinary Resolution**

Where a matter may be determined by Ordinary Resolution, voting may be decided by a simple majority vote of those present or participating by proxy, personal representative or whether the voting is by voting paper or electronically and the voting may be by a show of hands.

Each unit owner will have one vote or according to unit entitlement if the chairman decides or upon the request of one of the authorised voting members. Each unit Owner shall have the same number of votes as the unit Entitlement of the Owner's unit.

#### **Article 54 - Meeting and voting electronically.**

- A. The owners association may determine with an Ordinary Resolution a process to be followed for electronic voting the voting provided that such process shall be as a change to the Articles of Association and amendment to the Joint Property By-Laws.
- B. Where voting in a general assembly includes voting by electronic means, the voting process must follow the electronic voting procedures specified in the Articles of Association and the Joint Property By-Laws.

### **Chapter 7 – Owners Association Manager**

#### **Article 55 – Power to Appoint an Owners Association Manager**

The owners association may:

- i. by Ordinary Resolution of a general assembly appoint an Owners Association Manager licensed by RERA
- ii. by Ordinary Resolution delegate the power to appoint an Owners Association Manager to the board.

The appointment decision shall indicate the functions of the manager.

#### **Article 56 – Role of Owners Association Manager**

Without limiting any additional contractual obligations, the Owners Association Manager is required to:

- i. work with the board to develop strategies for the management of the common areas;
- ii. implement strategies, programs and plans set by the board;
- iii. represent the owners association and the board before relevant authorities;
- iv. facilitate meetings of the board and the owners association;
- v. provide the full range of administrative and secretarial services to the board and the owners association;
- vi. facilitate the owners association exercising its functions and powers;
- vii. arrange for tenders and facilitate the entry into contracts on behalf of the owners association;
- viii. supervise the performance of contractors and suppliers to the owners association and report to the board or general assembly;
- ix. prepare annual budgets, in conjunction with the treasurer, for the approval of the board;
- x. address queries and complaints of the Owners;
- xi. process insurance claims;

- xii. undertake basic credit control processes;
- xiii. supervise legal proceedings including any proceedings under Article 68 (b) of the Law;
- xiv. ensure all proposed Works are compliant and supervise such Works;
- xv. collect, update and safeguard all information of the owners association including a roll of all Owners and their addresses;
- xvi. be independent of the developer or any Owner in the Joint Property;
- xvii. follow lawful instructions of the owners association or board;
- xviii. disclose to the board or the general assembly any conflicts of interest;
- xix. act honestly fairly and transparently in dealings with the board and Owners.
- xx. Have a written contract with the owners association setting out:
  - a. The name and contact details of the Owners Association Manager;
  - b. The name of the Association
  - c. The duration of the contract, which must not exceed two years unless it is within a Special Management Scheme;
  - d. The management fee payable for the total contract period;
  - e. The functions delegated by the owners association
  - f. The contractual terms
  - g. The steps for terminating the agreement;
  - h. An undertaking by the Owners Association Manager to disclose any conflict of interest or remuneration or benefit received as a result of a contract entered into by or on behalf of the owners association during the term of the contract;
  - i. Provisions relating to the banking of association annual subscriptions into the Operational Account and the Reserve Account;
  - j. Any agreement concerning the audit of accounts.

The owners association or the board may terminate an agreement with the Owners Association Manager if the manager breaches the requirements of the contract.

In all circumstances the Owners Association Manager shall provide to the Authority such information concerning the board and the owners association to the Authority as the Authority may direct from time to time. An Owners Association Manager may not delegate its obligations pursuant to this Article.

#### **Article 57 – Delegation**

The owners association or the board may delegate some of its functions to the association manager, without limiting their obligations under the law, this Resolution, other laws.

### **Chapter 8 - Owners rights and obligations**

#### **Article 58 - Compliance with Joint Property documentation and general law**

An Owner must do the following:

- i. comply with the Joint Property By-Laws for the Joint Property, the Articles of Association, this Resolution, the Law and other applicable laws.
- ii. comply with any notice from the owners association requiring compliance with the Joint Property By-Laws and Operating Rules.
- iii. notify the owners association of any change in the ownership of the Unit.

An Owner may paint walls, affix wallpaper, change floors, carpet or otherwise decorate the internal structure of the unit provided that:

- i. The action complies with any requirements of the Joint Property By-Law including requirements to prevent the transmission of sound;
- ii. The action does not damage the common areas.
- iii. not make any structural alteration to a unit without the consent of the owners association.

**Article 59 - Payment of annual subscriptions and other obligations**

- A. The Owners must pay their annual subscription and in the event of any failure to pay when due:
  - i. will prevent an Owner from exercising the power to vote at a general assembly except as specified in this Resolution;
  - ii. where any subscription remains unpaid for three months or more the owners association may require the Owner to pay compensation on the unpaid subscriptions at a rate determined by the Owners Association in the Articles of Association;
- B. The owners association may by Ordinary Resolution establish measures and mechanisms for an Owner that fails to comply or whose tenant or occupier fails to comply with a direction of the owners association to comply with an Operating Rule or other requirement of the Joint Property By-Laws.

**Article 60 - Owners obligations**

The Owners must comply with the following:

- i. at their own expense keep their units in a good state of repair and condition
- ii. Comply with any obligations pertaining to their units and the Law, this Resolution, the Articles of Association, Joint Property By-Laws and any other laws
- iii. Ensure that their unit's occupants and invitees are fully aware of and comply with Operational Rules
- iv. Obtain the board approval in relation to the Works to their unit
- v. To use their units strictly in accordance with the permitted use and must not change the use of the units without prior written approval of the owners association and in accordance with all other requirements of the relevant authorities.

**Article 61 – Resolutions**

- A. Except as otherwise specified in this Resolution, the Articles of Association or the Joint Property By-laws shall be amended by:
  - i. Ordinary Resolution for the issues to be decided by the general assembly
  - ii. Ordinary Resolution for the approval on amendments to the Joint Property By-Laws.
- B. The changes to the Joint Property By-laws shall be approved by Special Resolution:
  - i. Changes to the architectural landscaping or other theme around which the development is designed;
  - ii. Changes to the permitted use of land in the Joint Property;

- C. The following restrictions apply to changes to the Joint Property By-laws:
- i. Changes to Exclusive Use rights established upon the initial registration of the Joint Property By-Laws may only be approved with the consent of the beneficiary of those Exclusive Use rights unless expressed otherwise in the Joint Property By-Laws;
  - ii. Changes to the entitlements of units must be made in accordance with guidelines issued by the Authority;
  - iii. Changes to easements and covenants agreements set out in the Joint Property By-Law require the consent of the beneficiary
  - iv. Changes to a Special Management Scheme may only be made with the consent of the beneficiary
  - v. Changes to construction period covenants can only be made with the consent of the developer;
  - vi. Changes to the timetable for construction and implementation of future stages of development of the Joint Property require the consent of the developer.

#### **Article 62 - Notification of changes to Articles of Association and Joint Property By-Laws**

Where there is an addition to the Articles of Association or a change to the Joint Property By-Laws the owners association shall:

- i. notify all Owners of any changes in the Articles of Association and Joint Property By-Laws as soon as possible following the adoption of such changes at a general assembly; and
- ii. procure that such amendments are registered as a variation of the Joint Property By-Law with in the Special Register of Joint Property within not more than thirty (30) days from the date of the general assembly.

Amendments pursuant to this Article will only be binding on third parties from the date of recording in the Special Register of Joint Properties but will be binding on Owners from the date of notification.

#### **Article 63 - Owners obligation to supply address for service**

The Owner must supply to the Owners Association Manager if appointed or the board for the purposes of notices:

- i. an email address; and
- ii. a postal address.

If the address of the owner changes, the Owner is responsible for ensuring that the owners association records are updated.

#### **Article 64 - Indemnity**

Owners indemnify the owners association against any costs, claims or financial liabilities including costs or enforcement arising from any failure by the Owner or their tenants or invitees to comply with the Law, this Resolution

#### **Article 65 - Owners Standing**

Owners have the right to participate in the affairs of the owners association and they shall abide by any resolution of the owners association and the decisions of the board related to the obligations of

the owners association. Owners are not entitled to object to the value of the annual subscription approved by the general assembly or the obligation to pay.

## **Chapter 9 - Rights of third parties when dealing with an owners association**

### **Article 66 – Authenticating documents**

Any third party dealing with an owners association may rely upon any contract or undertaking where the contract or undertaking is signed by the Association Manager and any two (2) board members, or signed by any three (3) board members one of whom is either the chairperson, secretary or treasurer; and stamped with the official seal of the owners association.

In all circumstances the owners association shall be entitled to take steps to set aside a contract or undertaking where the counterparty knew that the internal approvals were not in place or in any case where the counterparty conspires in any fraud.

### **Article 67 – Operating the bank account**

Any bank account for the owners association may be operated on behalf of the association by

- i. the Association Manager and two board members;
- ii. Three board members jointly provided one of them is the Chairperson, secretary or treasurer.

### **Article 68 – Contract term**

No contract with an owners association shall be entered into that is longer than two (2) years unless the contract:

- i. forms part of the obligations of a Special Management Scheme in accordance with a resolution of the Authority;
- ii. is with a government owned or controlled utility provider or other government body with whom the owners association is required to contract with or is made pursuant to Article 67C of the Law;
- iii. has been ratified by the board pursuant to Article 9

## **Chapter 10 - Authority's Rights and Powers**

### **Article 69 – Authority powers**

Nothing shall limit the Authority's powers as stated in the law and the Authority has the right to do the following:

- i. to require that the owners association at its expense commission from independent experts such reports and information as may assist the Authority perform its functions;

- ii. to require that the owners association and any third party to present the dispute between the parties to the mediation committee established in the Authority with the costs of the mediation to be borne by the owners association but without limiting the committee's ability to order costs against another party to the mediation;
- iii. to direct the owners association to appoint an independent observer approved by the Authority to observe at any general assembly of an owners association with any costs of such representative to be met by the owners association;
- iv. To issue binding directions to the owners association;
- v. to review all records of the owners association including the board;
- vi. Where relevant to the affairs of the owners association, to review any information held by Owners;
- vii. to view all records and information held by the Owners Association Manager;
- viii. to request information from the records of the Bureau in order to determine current ownership and address information;
- ix. to request the association to convene a general assembly and to specify items to be included in the agenda for that general assembly;
- x. to appoint an Administrator according to Chapter 11 of this Resolution;
- xi. To issue directions and guidelines on what developments constitute a Joint Property
- xii. To approve measures and mechanisms set by the owners association against violators.
- xiii. Issue guidelines for the more effective implementation of this Resolution, to specify Articles of Association, and the form for the Joint Property By-Law.
- xiv. By resolution to provide exemptions from any part of this Resolution or to set special conditions applicable to small Joint Properties.
- xv. to provide a procedure to be followed where the Owners resolve to terminate a Joint Property
- xvi. to provide a process where the Joint Property is registered over a lease or a Musataha right;
- xvii. to provide guidance for owners association wishing to vary the unit Entitlements
- xviii. to provide for exceptions to the requirements for a Property Location Plan and in particular in relation to developments that are partially completed at the date of this Resolution or where the units have been sold in an off-plan sale project
- xix. to specify requirements for contracts between an Owners Association Manager and an owners association.

## **Chapter 11 - Appointment of Administrator**

### **Article 70 - Right to Appoint an Administrator**

The authority may appoint an administrator to take control of the owners association for a specified period of time in the following circumstances:

- i. the owners association refuses or fails to comply with a dispute resolution decision made by an arbitrator or the mediation committee of the the Authority;
- ii. the owners association fails to discharge a duty imposed on it by the Law, this Resolution or directions made under the Law; or
- iii. the affairs of the owners association are in serious disarray.

### **Article 71 – Result of appointing an Administrator**

The appointment of an Administrator will result in the following:

- i. All positions on the board will be vacated;
- ii. the powers and functions of the board are conferred on the administrator; and
- iii. the administrator must comply with the Authority's written directions, whether given in the instrument making the appointment or subsequently.

#### **Article 72 – Who may be Administrator**

An administrator may comprise an Association Manager or other specialist consultant in the field of Joint Property capable of procuring that the owners association meet its obligations under the Law and this Resolution.

#### **Article 73 - Appointing a new board on exit of Administrator**

The Administrator before the term of his appointment expires must convene a general assembly to elect a new board which will assume the responsibility of the owners association, with sufficient time to call the meeting.

### **Chapter 12 - General**

#### **Article 74 - Notices**

The address for service of any notice on an Owner shall be that email or other address provided by the Owner pursuant to Article 63.

The address for service of any notice on an owners association shall be the address specified in the Joint Property By-Laws or the address of its Association Manager.

The address for service of any Association Manager shall be the registered office of the Association Manager.

#### **Article 75 – Service of notices**

Notices will be deemed served upon confirmation of receipt of the server if it was sent by email or upon confirmation of receipt if it was sent by other means.

#### **Article 76 – Alternative service methods**

In any case where no address is provided by the Owner or where the Owner fails to acknowledge service within a reasonable time determined by the owners association, the owners association shall be entitled to effect service by attaching any notice to the main entrance of the unit. The Authority may determine other means by which notices may be served pursuant to this Resolution.

#### **Article 77 - Cancellation of Joint Properties**

A Joint Property may be terminated as follows:

- i. By a resolution of the Owners at a general assembly with a voting percentage of not less than 90% of the total Entitlement for the Joint Property;
- ii. By a court order;
- iii. By the Authority and competent municipality approval when a consultant engineer has certified to the relevant municipality and to the Authority that the structural systems cannot be rectified or are likely to collapse.
- iv. Under a mechanism set by the Authority for the termination of the Joint Property.

The owners association shall follow any procedures for termination of a Joint Property specified by the Authority.

## **Chapter 13 -Transitional**

### **Article 78 - Existing Owners Associations**

- A. An existing owners association created prior to this Resolution and developers must rectify its status pursuant to this Resolution within six months from the date of its coming into effect.
- B. In the case where the sale of the first unit has been registered in the Land Register before the date of this Resolution, whether or not the owners association was established by the date of commencement of this Resolution, the owners shall call for a general assembly within 6 months from the date of this Resolution coming into effect pursuant to the provisions of this Resolution, and otherwise bring the owners associations operations in conformance with the Law and this Resolution and the owners association or board shall provide the Joint Property By-Laws and Operational Rules to the Bureau and the Authority.
- C. In any case where it is unclear who is managing the Joint Property or who is entitled to issue the notice of meeting, the Authority may upon a request by an Owner require that the general assembly be called by an independent third party, who shall serve notice of the meeting in accordance with the provisions of this Resolution.

### **Article 79 – Existing Joint Properties do not need Property Location Plan**

Existing or transitional owners association are not required to have a Property Location Plan if the Bureau has issued the title deeds.

### **Article 80 – Developer managing existing Joint Property**

In the case of any Developer who manages a Joint Property at the date of this Resolution, the developer must within six (6) months of the date of this Resolution call a general assembly in accordance with the provisions of this Resolution whereupon the owners association or board shall submit the Joint Property By-Laws and Operational Rules to the Authority and the Bureau and take any other steps necessary to bring the owners association's operations in conformance with the Law and this Resolution.

### **Article 81 - Special Management Schemes**

The Joint Property By-Laws will specify the nature of the Special Management Scheme and its effects on the Joint Property.

### **Article 82 – Resolution required for Special Management Schemes**

The Authority shall issue a Resolution on Special Management Schemes impacting Joint Properties, and the Authority may issue guidelines and directions in this regard.

**Article 83 – Notify Authority of Special Management Schemes**

The applicants lodging a Joint Property By-Laws shall be obliged to inform the Authority of any arrangements in the nature of a Special Management Scheme.

**Article 84 – Deferring approval of Joint Property By-Laws**

The Authority may defer the approval of the Joint Property By-Laws or defer its registration pending the finalising of the Special Management Scheme pursuant to the Resolution of Special Management Schemes.