

SCHEDULES

SCHEDULE 3

Section 34

COMMONHOLD ASSOCIATION

PART 1

MEMORANDUM AND ARTICLES OF ASSOCIATION

Introduction

- 1 In this Schedule—
- (a) “memorandum” means the memorandum of association of a commonhold association, and
 - (b) “articles” means the articles of association of a commonhold association.

Form and content

- 2 (1) Regulations shall make provision about the form and content of the memorandum and articles.
- (2) A commonhold association may adopt provisions of the regulations for its memorandum or articles.
- (3) The regulations may include provision which is to have effect for a commonhold association whether or not it is adopted under sub-paragraph (2).
- (4) A provision of the memorandum or articles shall have no effect to the extent that it is inconsistent with the regulations.
- (5) Regulations under this paragraph shall have effect in relation to a memorandum or articles—
- (a) irrespective of the date of the memorandum or articles, but
 - (b) subject to any transitional provision of the regulations.

Alteration

- 3 (1) An alteration of the memorandum or articles of association shall have no effect until the altered version is registered in accordance with this paragraph.
- (2) If the commonhold association makes an application under this sub-paragraph the Registrar shall arrange for an altered memorandum or altered articles to be kept in his custody, and referred to in the register, in place of the unaltered version.
- (3) An application under sub-paragraph (2) must be accompanied by a certificate given by the directors of the commonhold association that the altered memorandum or articles comply with regulations under paragraph 2(1).

Status: This is the original version (as it was originally enacted).

- (4) Where the Registrar amends the register on an application under sub-paragraph (2) he shall make any consequential amendments to the register which he thinks appropriate.

Disapplication of Companies Act 1985

- 4 (1) The following provisions of the Companies Act 1985 (c. 6) shall not apply to a commonhold association—
- (a) sections 2(7) and 3 (memorandum), and
 - (b) section 8 (articles of association).
- (2) No application may be made under paragraph 3(2) for the registration of a memorandum altered by special resolution in accordance with section 4(1) of the Companies Act 1985 (objects) unless—
- (a) the period during which an application for cancellation of the alteration may be made under section 5(1) of that Act has expired without an application being made,
 - (b) any application made under that section has been withdrawn, or
 - (c) the alteration has been confirmed by the court under that section.

PART 2

MEMBERSHIP

Pre-commonhold period

- 5 During the period beginning with incorporation of a commonhold association and ending when land specified in its memorandum becomes commonhold land, the subscribers (or subscriber) to the memorandum shall be the sole members (or member) of the association.

Transitional period

- 6 (1) This paragraph applies to a commonhold association during a transitional period.
- (2) The subscribers (or subscriber) to the memorandum shall continue to be members (or the member) of the association.
- (3) A person who for the time being is the developer in respect of all or part of the commonhold is entitled to be entered in the register of members of the association.

Unit-holders

- 7 A person is entitled to be entered in the register of members of a commonhold association if he becomes the unit-holder of a commonhold unit in relation to which the association exercises functions—
- (a) on the unit becoming commonhold land by registration with unit-holders under section 9, or
 - (b) on the transfer of the unit.

Joint unit-holders

- 8 (1) This paragraph applies where two or more persons become joint unit-holders of a commonhold unit—
- (a) on the unit becoming commonhold land by registration with unit-holders under section 9, or
 - (b) on the transfer of the unit.
- (2) If the joint unit-holders nominate one of themselves for the purpose of this sub-paragraph, he is entitled to be entered in the register of members of the commonhold association which exercises functions in relation to the unit.
- (3) A nomination under sub-paragraph (2) must—
- (a) be made in writing to the commonhold association, and
 - (b) be received by the association before the end of the prescribed period.
- (4) If no nomination is received by the association before the end of the prescribed period the person whose name appears first in the proprietorship register is on the expiry of that period entitled to be entered in the register of members of the association.
- (5) On the application of a joint unit-holder the court may order that a joint unit-holder is entitled to be entered in the register of members of a commonhold association in place of a person who is or would be entitled to be registered by virtue of sub-paragraph (4).
- (6) If joint unit-holders nominate one of themselves for the purpose of this sub-paragraph, the nominated person is entitled to be entered in the register of members of the commonhold association in place of the person entered by virtue of—
- (a) sub-paragraph (2),
 - (b) sub-paragraph (5), or
 - (c) this sub-paragraph.

Self-membership

- 9 A commonhold association may not be a member of itself.

No other members

- 10 A person may not become a member of a commonhold association otherwise than by virtue of a provision of this Schedule.

Effect of registration

- 11 A person who is entitled to be entered in the register of members of a commonhold association becomes a member when the company registers him in pursuance of its duty under section 352 of the Companies Act 1985 (c. 6) (duty to maintain register of members).

Termination of membership

- 12 Where a member of a commonhold association ceases to be a unit-holder or joint unit-holder of a commonhold unit in relation to which the association exercises functions—
- (a) he shall cease to be a member of the commonhold association, but

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- (b) paragraph (a) does not affect any right or liability already acquired or incurred in respect of a matter relating to a time when he was a unit-holder or joint unit-holder.

- 13 A member of a commonhold association may resign by notice in writing to the association if (and only if) he is a member by virtue of paragraph 5 or 6 of this Schedule (and not also by virtue of any other paragraph).

Register of members

- 14 (1) Regulations may make provision about the performance by a commonhold association of its duty under section 352 of the Companies Act 1985 (c. 6) (duty to maintain register of members) where a person—
- (a) becomes entitled to be entered in the register by virtue of paragraphs 5 to 8, or
 - (b) ceases to be a member by virtue of paragraph 12 or on resignation.
- (2) The regulations may in particular require entries in the register to be made within a specified period.
- (3) A period specified under sub-paragraph (2) may be expressed to begin from—
- (a) the date of a notification under section 15(3),
 - (b) the date on which the directors of the commonhold association first become aware of a specified matter, or
 - (c) some other time.
- (4) A requirement by virtue of this paragraph shall be treated as a requirement of section 352 for the purposes of section 352(5) (fines).

Companies Act 1985

- 15 (1) Section 22(1) of the Companies Act 1985 (initial members) shall apply to a commonhold association subject to this Schedule.
- (2) Sections 22(2) and 23 of that Act (members: new members and holding company) shall not apply to a commonhold association.

PART 3

MISCELLANEOUS

Name

- 16 Regulations may provide—
- (a) that the name by which a commonhold association is registered under the Companies Act 1985 must satisfy specified requirements;
 - (b) that the name by which a company other than a commonhold association is registered may not include a specified word or expression.

Statutory declaration

- 17 For the purposes of section 12 of the Companies Act 1985 (registration: compliance with Act) as it applies to a commonhold association, a reference to the requirements of that Act shall be treated as including a reference to a provision of or made under this Schedule.