

THE APARTMENT OWNERSHIP ACT, 1983

ACT 5 OF 1984

WITH

RULES & NOTIFICATIONS

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THE KERALA APARTMENT OWNERSHIP ACT, 1983

(ACT 5 OF 1984)

An Act to provide for the ownership of individual apartment in a building and to make such apartment heritable and transferable property.

Preamble.- WHEREAS it is expedient to provide for the ownership of an individual apartment heritable and transferable property, and to provide for matters connected with the purposes aforesaid;

BE it enacted in the Thirty-fourth Year of the Republic of India as follows:-

1. Short title extent, and commencement.

(1) This Act may be called the Kerala Apartment Ownership Act, 1983.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint; and different dates may be appointed for different areas in the State.

2. Application of the Act. - This Act applies only to property, the sole owner or all of the owners of which submit the same to the provisions of this Act by duly executing and registering a declaration as hereinafter provided.

* Published in K.G. No. 6 dt. 7-2-1984 (K.G. Ex. No. 39 dt. 12-1-1984)

** Date of Commencement: 1-8-1985 (Please see notification No. 1 at Page 31)
Whole of the State : 1-10-1988 as per SRO 1153/88.

OBJECTS AND REASONS

Act 5 of 1984

Lands have become dear in the principal towns and cities in the state and consequently independent house-sites in such areas are beyond the means of even people having moderate income. Provision of house sites for construction of independent houses also results in un-economic urban land utilisation. Further, there is scarcity of lands in the cities for house construction purposes. Therefore, it has become necessary to construct apartments (flats) in a single building. To promote the construction of such buildings it is necessary to provide for the ownership of such individual apartments and to make such apartments heritable and transferable property. So that the residents of such buildings can secure loans from institutions the Life Insurance Corporation of India. But, there is no law in the state which enables the occupants of apartments to acquire ownership and marketable title to their apartments. The Bill seeks to enact a law for the purpose.

(Published in K.G. Ex.No. 197 dt.26-2-1983.)

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Provided that no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used, for residential purposes.

Definitions .- In this Act, unless the context otherwise requires,-

- (a) "apartment" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended to be used for residential purposes and with a direct exit to a public street, road, or highway or to a common area leading to such street, road or highway;
- (b) "apartment owner" means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the declaration;
- (c) "apartment number" means the number, letter, or combination thereof designating the apartment in the declaration;
- (d) "Association of Apartment Owners" means all of the apartment owners acting as a group in accordance with the bye laws and the declaration;
- (e) "building" means a building containing two or more apartments, and comprising a part of the property;
- (f) "bye-laws" means the bye-laws of the Association of Apartment Owners;
- (g) "common areas and facilities", unless otherwise provided in the declaration or lawful amendments thereto, means-
 - (i) the land on which the building is located;
 - (ii) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;
 - (iii) the basements, cellars, yards, gardens, parking areas and storage spaces;
 - (iv) the premises for the lodging of persons employed for the management of the property;
 - (v) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
 - (vi) elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;
 - (vii) Such community, and commercial facilities as may be provided for in the declaration; and

- (viii) All other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use;
- (h) "common expenses" means-
- (i) all sums lawfully assessed against the apartment owners by the Association of Apartment Owners;
 - (ii) expenses of administration, maintenance, repair or replacement of the common areas and facilities;
 - (iii) expenses agreed upon as common expenses by the Association of Apartment Owners;
 - (iv) expenses declared as common expenses by the provisions of this Act, or by the declaration or the bye-laws;
- (i) "common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;
- (j) "competent authority" means, in relation to buildings constructed or to be constructed by the Kerala State Housing Board, the Housing Commissioner, and, in any other case, the person authorised by the Government, by notification in the Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;
- (k) "declaration" means the instrument by which a property is submitted to the provisions of this Act as hereinafter provided and such declaration as lawfully amended from time to time;
- (l) "deed of apartment", means a deed of apartment executed by an apartment owner in pursuance of sub-section (2) of section 5;
- (m) "Housing Board" means the Kerala State Housing Board constituted under section 4 of the Kerala State Housing Board Act, 1971 (19 of 1971);
- (n) "Housing Commissioner" means the Housing Commissioner to the Government;
- (o) "Joint family" means an undivided Hindu family and, in the case of other persons, a group or unit, the members of which are by custom joint in possession or residence;
- (p) "limited common areas and facilities" means those common areas and facilities designated in the declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments;
- (q) "majority" or "majority of apartment owners" means the apartment owners with fifty-one per cent or more of the votes in accordance with the percentages assigned in the declaration to the apartments for voting purposes;

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- (r) "Managing Committee" means the Managing Committee of the Association of Apartment Owners;
- (s) "person" includes a joint family;
- (t) "prescribed" means prescribed by rules made under this Act;
- (u) "property" means land, the buildings, improvements and structures thereon, all owned in freehold or held on lease or as occupant under any law for the time being in force and all easement rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this Act;
- (v) "Secretary" means the Secretary of the Managing Committee;
- (w) "State" means the State of Kerala;

Status of apartments. - Each apartment, together with its undivided interest in the common areas and facilities appurtenant to such apartment shall, for all purposes, constitute heritable and transferable immovable property within the meaning of any law for the time being in force in the State and accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities investigations, legal proceedings and remedies and to penalty, forfeiture and punishment as any other immovable property or make a bequest of the same under any law applicable to the transfer and succession of immovable property.

Ownership of apartments.-

- (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.
- (2) Each apartment owner shall execute a declaration that he submits his apartment to the provisions of this Act and a deed of apartment in relation to his apartment in the manner prescribed for the purpose.

Common areas and facilities.-

- (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration.
- (2) The percentage referred to in sub-section (1) shall be computed by taking as basis the value of the apartment in relation to the

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value of the property; and such percentage shall reflect the limited common areas and facilities.

- (3) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character, and shall not be altered without the consent of all of the apartment owners expressed in an amended declaration duly executed and registered as provided in this Act.
- (4) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.
- (5) The common areas and facilities shall remain undivided, and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been excluded from the provisions of this Act as provided in section 14 or unless the property is subject to an action for partition under section 22, and any covenant to the contrary shall be null and void.
- (6) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.
- (7) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements there to shall be carried out only as provided in this Act and in the bye-laws.
- (8) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Secretary or Managing Committee, to have such access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the common areas and facilities therein, or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

- 7. Compliance with covenants, bye-laws and administrative provisions.** - Each apartment owner shall comply strictly with the bye-law and with the administrative rules and regulations adopted pursuant to the Act, and with the covenants, conditions and restrictions set forth

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in the declaration or in the deed to his apartment, and failure to comply with any of the same shall be a ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the Secretary or managing committee on behalf of the Association of Apartment Owners or, in a proper case, by an aggrieved apartment owner.

3. **Certain works prohibited.**- No apartment owner shall, without the previous unanimous consent of all the other apartment owners,-

(a) do any work which would-

- (i) jeopardise the soundness or safety of the property; or
- (ii) reduce the value of the property; or
- (iii) impair any easement or hereditament; or

(b) add any material structure to his apartment or excavate any additional basement or cellar in the property.

9. **Encumbrances against apartments, removal from encumbrances, effect of part payment.**

(1) Subsequent to recording the declaration as provided in this Act and while the property remains subject to this Act, no encumbrance of any nature shall arise or be effective against the property and during such period encumbrances may arise or be created only against each apartment and percentage of undivided interest in the common areas and facilities appurtenant thereto, in the same manner and under the same conditions in every respect as encumbrance may arise or be created upon or against any other separate parcel of property subject to individual ownership.:

Provided that, if during such period, any encumbrance has arisen or been created against such apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto, no such apartment and such percentage of undivided interest shall be partitioned or subdivided in interest:

Provided further that, no labour performed or materials furnished with the consent or at the request of an apartment owner or his agent or his contracted or sub-contractor shall be the basis for a charge or any encumbrance under the provisions of the Transfer of Property Act, 1882 (Central Act 4 of 1882) against the apartment or any other property of any other apartment owner not expressly consenting to or requesting for the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto.

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- (2) Labour performed and material furnished for the common areas and facilities, if duly authorised by the Association of Apartment Owners, the Secretary or Managing Committee in accordance with this Act, the declaration or the bye-laws, shall be deemed to have been performed or furnished with the express consent of each apartment owner and shall be the basis for a charge or encumbrance under the Act aforesaid against each of the apartments and shall be subject to the provisions of sub-section (3) of this section.
- (3) In the event of a charge or any encumbrance against two or more apartments becoming effective, the apartment owners of the several apartments may exclude their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to such apartments from the charge or encumbrance and payment of the fractional or proportional amounts attributable to each of the apartments affected, and thereupon the apartments of the apartment owners who have excluded their apartments the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the charge or encumbrance.
- (4) Payments under sub-section (3) shall be computed by reference to the percentages appearing in the declaration.
- (5) The satisfaction or discharge of any charge or encumbrance shall not prevent the person having any other charge or encumbrance from proceeding to enforce his rights against any apartment owner the percentage of undivided interest in the common areas and facilities appurtenant thereto.

10. Common profits and expenses.- The common profits of the project shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

11. Contents of declaration.

- (1) The declaration shall contain the following particulars, namely:
 - (a) description of the land on which the building and improvements are, or are to be, located; and whether the land is held on leasehold or freehold;
 - (b) description of the building stating the number of storeys, basements, the number of apartments and the principal materials by which it is, or is to be, constructed;
 - (c) the apartment number of each apartment, and a statement of its location, approximate area, number of rooms

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- immediate common area to which it has access and any other data necessary for its proper identification;
- (d) description of the common areas and facilities;
 - (e) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;
 - (f) value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting; and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the declaration;
 - (g) statement of the purposes for which the building and each of the apartments are intended and restricted as to use;
 - (h) the name of a person to receive service of process in the cases herein after provided, together with the residence or place of business of such person which shall be within the city, municipality, township or panchayat in which the building is located;
 - (i) provision as to the percentage of votes by the apartment owners, which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property;
 - (j) any other details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this Act;
 - (k) the method by which the declaration may be amended, consistent with the provisions of this Act.
- (2) A true copy each of the declaration and the bye-laws and all amendments thereto shall be filed in the office of the competent authority.

Contents of deeds of apartments

- (1) Deeds of apartment shall include the following particulars, namely:-
- (a) description of the land as provided in section 11 or the post office address of the property, including in either case the liber, page and date of executing the declaration, the date and serial number of its registration under the Registration Act, 1908 (Central Act 16 of 1908), and the date and other references, if any, of its filing with the competent authority
 - (b) the apartment number of the apartment in the declaration

- (c) and any other data necessary for its proper identification;
 - (c) statement of the use for which the apartment is intended and restrictions on its use, if any;
 - (d) the percentage of undivided interest appertaining to the apartment in the common areas and facilities;
 - (e) any further details which the parties to the deed may deem desirable to set forth consistent with the declaration and this Act.
- (2) A true copy of every deed of apartment shall be filed in the office of the competent authority.

13. Declaration, deeds of apartments and copies of floor plants to be registered.

- (1) The declaration and all amendments thereto, the deed of apartment in respect of each apartment and the floor plans of the buildings referred to in sub-section (2) shall all be registered under the Registration Act, 1908 (Central Act 16 of 1908).
- (2) Simultaneously with the registration of the declaration, there shall be filed along with it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartments, stating the name of the building or that it has no name, and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the local authority within whose jurisdiction the building is located.
- (3) If the plans referred to in sub-section (2) do not include a verified statement of an architect that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, there shall be recorded prior to the first conveyance of any apartment, an amendment to the declaration to which shall be attached a verified statement of an architect certifying that the plans thereto for filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the apartment as built.
- (4) In all registration offices, a book called "Register of Declarations and Deeds of Apartments under the Kerala Apartment Ownership Act, 1983" and index relating thereto shall be kept.
- (5) The book and the index referred to in sub-section(4) shall be kept in such form and shall contain such particulars as may be prescribed.

- (6) It shall be the duty of the every Secretary or Managing Committee to send to the Sub-Registrar of the area in which the property containing the apartment is situate, or if there is no Sub-Registrar for the area, to the Registrar of the District in which such property is situate, a certified copy of the declaration and deed of apartment made in respect of every apartment contained in the building forming part of the property together with a memorandum containing such particulars as may be prescribed.
- (7) The Sub-Registrar or, as the case may be, the Registrar shall register the declaration along with floor plans of the building and the deed of apartment in the Register of Declarations and Deeds of Apartments under this Act and shall also enter particulars in the index kept under sub-section(5).
- (8) Any person acquiring any apartment of any apartment owner shall be deemed to have notice of the declaration and of the deed of apartment as from the date of its registration under sub-section (7).
- (9) Except as provided in this section, the provisions of the Registration Act, 1908 (Central Act 16 of 1908), shall *mutatis mutandis* apply to the registration of the declarations and deeds of apartments, and the words and expressions, used in this section but not defined in this Act shall have the meanings assigned to them in the Registration Act, 1908 (Central Act 16 of 1908).

14. Exclusion from provisions of Act.

- (1) All the apartment owners may exclude a property from the provisions of this Act by an instrument to the effect duly executed:

Provided that the holders of all charges and other encumbrances affecting any of the apartments consent thereto or agree, in either case by instruments duly executed, that their charges or encumbrances be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.
- (2) Upon the exclusion of the property from the provisions of this Act, the property shall be deemed to be owned in common by the apartment owners, and the undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

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15. Exclusion no bar to subsequent re-submission of property 1 Act. - The re-exclusion provided for in section 14 shall in no way bar the subsequent re-submission of the property to the provisions of this Act.

16. Bye-laws.-

- (1) The administration of every property shall be governed by bye-laws, a true copy of which shall be annexed to the declaration.
- (2) No modification of, or amendment to, the bye-laws shall be made unless set forth in an amendment to the declaration, and the amendment duly recorded, and a copy thereof is duly filed with the competent authority.
- (3) The bye-laws shall provide for the following matters; namely
 - (a) the election, from among the apartment owners; of a Managing Committee and the number of persons constituting same;
 - (b) the term of office of the members of the Managing Committee.
 - (c) the powers and duties and the allowances to be paid to members of the Managing Committee;
 - (d) the method of removal from office of members of the Managing Committee;
 - (e) the election of a Secretary to the Managing Committee and his powers and duties;
 - (f) the powers and duties of the Managing Committee which may be delegated to the Secretary by the Committee;
 - (g) procedure for convening and conducting meetings of the apartment owners;
 - (h) election of a President from among the members of the Managing Committee who shall preside over the meetings of such Committee of the Association of apartment owners;
 - (i) election of a Treasurer and his powers and duties;
 - (j) maintenance, repair and replacement of the common areas and facilities and payments therefor;
 - (k) manner of collecting from the apartment owners their share of the common expenses;
 - (l) designation and conditions of service of persons employed for the maintenance, repair and replacement of the common areas and facilities;

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- (m) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;
 - (n) such restrictions on the requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities not set forth, in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners;
 - (o) the percentage of the votes required to amend the bye-laws.
- (4) **The bye-laws may also provide for the following matters, namely:-**
- (a) subject to the provisions of this Act, provision for regulating transfer or partition of any apartment and percentage of undivided interest in the common areas and facilities appurtenant to such apartment, subject to such terms and conditions as may be specified in the bye-laws;
 - (b) provisions enabling the Managing Committee to retain certain areas of the building and lease to non-residents for commercial purposes and for distribution of resulting proceeds to the apartment owners as income or application thereof in reduction of their common charges for maintaining the building;
 - (c) any other provisions, not inconsistent with the provisions of this Act, relating to the audit and accounts and administration of the property and annual and special general meetings, annual report and the like.

7. Waiver of use of common areas and facilities. - No apartment owner shall be entitled to exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by a abandonment of his apartment.

3. Separate assessment.- Notwithstanding anything to the contrary contained in any law relating to local authorities, each apartment and its percentage of undivided interest in the common areas and facilities appurtenant to such apartment (being an apartment submitted to the provisions of this Act) shall be deemed to be separate property for the purpose of assessment to tax on lands and buildings leviable under such law and shall be assessed and taxed accordingly; and for this purpose,

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a local authority shall make all suitable rules to carry out the provisions of this section.

19. Charge on property for common expenses.- All sums assessed by the Association of Apartment Owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a charge on such apartment and shall have priority over all other charges, except only-

- (i) charge, if any, on the apartment for payment of taxes due to the Government or a local authority; and
- (ii) all sums unpaid on a first mortgage of the apartment.

20. Joint and several liability of vendor for unpaid common expenses.

- (1) On the sale of an apartment, the purchaser of the apartment shall be jointly and severally liable with the vendor for all unpaid assessments against the vendor for his share of the common expenses upto the time of the sale without prejudice to the purchaser's right to recover from the vendor the amount paid by the purchaser therefore.
- (2) Any such purchaser shall be entitled to a statement from the Secretary or Managing Committee setting forth the amount of the unpaid assessment against the vendor, and such purchaser shall not be liable for, nor shall the apartment sold, be subject to a charge for any unpaid share of the common expenses against such apartment accrued prior to such sale in excess of the amount therein set forth.

21. Insurance.

- (1) The Secretary or Managing Committee if required by the declaration or the bye-laws or by a majority of the apartment owners, or at the request of a mortgagee having a first mortgage covering an apartment shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire, and such other hazards under such terms and for such amounts as shall be required, as requested.
- (2) Such insurance coverage shall be written on the property in the name of such Secretary or of the Managing Committee as trustee for each of the apartment owners in the percentages established in the declaration.

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Premiums shall be common expenses and provisions for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment for his benefit.

Position of property destruction or damage. - If within sixty days of the date of damage to, or destruction of, all or any part of the property, the Association of Apartment Owners does not decide by the Association of Apartment Owners to repair, reconstruct or rebuild the property or part, as the case may be, then and in that event,-

the property shall be deemed to be owned in common by the apartment owners;

the undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities;

any encumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided herein;

the property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale together with the net proceeds of the insurance on the property if any, shall be considered as one fund and shall be divided among all the apartment owners in percentage equal to the percentage of undivided interest owned by each owner in the property after first paying out all the respective shares of the statement owners to the extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner.

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Without limiting the rights of any apartment owner, actions may be brought by the Secretary or Managing Committee, in either case in the discretion of the Managing Committee, on behalf of two or more the apartment owners as their respective interest may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment.

Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the declaration to receive service of process.

to be binding on apartment owners, tenants, etc.

All apartment owners, tenants of such owners, employees of such owners or tenants, or any other person who may in any manner use any property or any part thereof submitted to the provisions of this Act shall be subject to this Act and to the declaration and the bye-laws of the Association of Apartment Owners adopted pursuant to the provisions of this Act.

- (2) All agreements, decisions and determinations lawfully made by the Association of Apartment Owners in accordance with the voting percentages established under this Act, the declaration or the by-laws, shall be deemed to be binding on all apartment owners.

25. Power to make rules.

- (1) The Government may, subject to the condition of previous publication, by notification in the Gazette, make rules for carrying into effect the provisions of this Act.
- (2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

26. Application of Transfer of Property Act. - For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882 (Central Act 4 of 1882), shall, in so far as they are not inconsistent with the provisions of this Act, apply to every apartment together with its undivided interest in the common areas and facilities appurtenant to such apartment, as those provisions apply in relation to any immovable property and the provisions of this Act shall take effect notwithstanding anything to the contrary contained in any contract.

27. Power to remove difficulties.

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything not inconsistent with the provisions of this Act which appear to them necessary or proper for the purpose of removing the difficulty.
- (2) Every order issued under sub-section (1) shall be laid, as soon as may be after it is issued, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modifications in the order or decides that the order should not be issued, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything done or omitted to be done under that order.

***THE KERALA APARTMENT OWNERSHIP RULES, 1994**

In exercise of the powers conferred by sub-section (1) of section 25 of the Apartment Ownership Act, 1983 (5 of 1984), the Government of Kerala hereby make the following rules, the same having been previously published as Notification No. 5721/Al/86/Housing dated the 15th October, 1989, as required by the said section, in the Kerala Gazette Extraordinary No. 900, dated the 5th October, 1989, namely:-

RULES

Short title and commencement:-

(1) These rules may be called the Kerala Apartment Ownership Rules, 1994.

** (2) They shall come into force at once.

Definitions:- (1) In these rules, unless the context otherwise requires,-

- (a) 'Act' means the Kerala Apartment Ownership Act, 1983 (5 of 1984);
- (b) 'Bye-laws' means the bye-laws framed under section 16 of the Act;
- (c) 'form' means a form appended to these rules;
- (d) 'Section' means a section of the Act.

(2) The words and expressions used but not defined in these rules but defined in the Act, shall have the meaning respectively assigned to them in the Act.

The form and manner in which the declaration and deed of apartment referred to in sections 5(2), 11 and 12 shall be submitted to the competent authority:-

- (1) The declaration and the deed of apartment referred to under sub-section (2) of section 5 of the Act, shall be executed in Form A and Form B, respectively and be signed and verified by the sole owner or all the owners, as the case may be.
- (2) The contents of the declaration shall be as provided in section 11 and the contents of the deed of apartment shall be as provided in section 12.
- (3) After the declaration is registered in conformity with sub-section (1) of section 13, the declarant shall forthwith report in writing to the competent authority, the fact of registration of the declaration and furnish such authority with a copy of the registered declaration.

Register of declaration and deeds of apartment under the Act:- The book and the index referred to in sub-section (4) of section 13 shall be kept in Form C and Form D, respectively.

Issued by Notf: GO(MS) No. 3/94/Hsg. dt. 14-2-1994, Published in K.G. Ex. No.213
15 3 1994 as SRO No. 308/94.

Date of Commencement: with immediate effect.

- 5. Circumstances under which a declaration made under section 11 (k) can be amended.** - The declaration made under sub-section(2) of Section 5 of the Act shall be amended only under the following circumstances, namely:-
- (i) when there is any bonafide mistake in the Declaration;
 - (ii) when there is subsequent to submission of a declaration any alteration in the description of nature of the property or any part thereof to which such declaration relates; or
 - (iii) when subject to the approval of the competent authority, an amendment is necessary for carrying out the purpose of the Act.
- 6. Manner in which a declaration can be amended.** - The declaration made under sub-section (2) of section 5 of the Act shall be amended only in the following manner, namely:-
- (a) If any amendment is to be made in the declaration submitted by the sole owner or all the owners of any property such sole owner or such owners as the case may be shall submit to the Competent Authority a fresh declaration in Form G.
 - (b) Such fresh declaration shall be accompanied by an application for amendment in Form F stating clearly the circumstances necessitating such amendment and also amendment to be made in the declaration sought to be amended.
 - (c) The fresh declaration referred to in sub-rule(ii) Rule 5 shall be signed and verified by the sole owner or all the owners as the case may be.

7. Format of Memorandum

The format of the Memorandum referred to under sub-section (6) of section 13 shall be in Form 'E'

APPENDICES

FORM A

(See Rule 3)

Declaration under Section 5(2), read with section 11(1) of Kerala Apartment Ownership Act, 1983

I/We, the undersigned, in pursuance of sub-section(2) of Section 5 of the Kerala Apartment Ownership Act, 1983, read with sub-section(1) of section 11 thereof hereby declare that I/We are/am the Owner/Owners of the property situated at Town/Village..... Taluk..... I/We do hereby further declare that I/We submit the said property comprising a building or buildings..... containing apartment, together with the common areas and facilities, mainly intended for residential purpose to the provisions of the Act and all amendments thereto.

Authenticated copies of the building plan and site plan, prepared by and sanctioned by are appended herewith and marked respectively as Annexure "A" and "B". The relevant title deed is also appended herewith and marked Annexure "C".

2. I/We..... do hereby further declare the following particulars as required under sub-section(1) of section 11 of the said Act:-

A. Description of the property:

- (i) Area and description of the land upon which the building/buildings is/are constructed.
- (ii) Area and description of the building/buildings:
Building No.
 - (a) Total plinth area:
 - (b) Number of Storeys:
 - (c) Number of apartments:
 - (d) Other particulars, if any:
- (iii) Area and description of common areas and facilities:
 - (a) Lawn, Parks, etc.,
 - (b) Road Pathways:
 - (c) Other common areas, if any:
 - (d) Water supply arrangements:
 - (e) Street lights within the property:
 - (f) Internal drainage:

- (iv) Description of the limited common areas and facilities if any stating to which apartments their use is reserved:
- (v) Value of the property:
- (vi) Nature of interest of the owner/owners in the property:
- (vii) Existing encumbrances, any, affecting the property:

B. Description of the limited common areas and facilities, in respect of each building:

- (a) Foundation and main wall of the building/buildings.
- (b) Stairway:
- (c) Water Tank:
- (d) Plumbing network:
- (e) Electric wiring network:
- (f) Other common areas.

C. Description of each apartment of each building—Apartment

No.....of building No.....

- (a) Location:
- (b) Approximate area:
- (c) Number of rooms:
- (d) Immediate common area to which it has access:
- (e) Any other information necessary for its proper identification:
- (f) Value of the apartment:

D. Percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes including voting.

E. The name of person to receive service of process in the cases as provided under the provisions of the Act, together with the residence or place of business of such person which shall be within the city, municipality, town-ship or panchayat in which the building is located.

F. Other particulars, if any:

3. I/We..... do hereby further declare Covenant and undertake as follows:

- (i) that each apartment constitutes a single residential unit, transferable and heritable as such, but shall not be partitioned or subdivided for any purpose, whatsoever;
- (ii) that each apartment owner, present or future, shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration and appertenant to such apartment;
- (iii) that the common areas and facilities, general or restricted shall remain undivided and that no owner shall bring any action for partition or division thereof so long as the property remains submitted to the provisions of the Act.

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that the percentage of the undivided interest in the general or restricted common areas and facilities, as expressed in the Declaration, shall not be altered except with the consent of all the apartment owners expressed in an amended Declaration duly executed and registered as provided in the said Act;

that during the period the property remains subject to the said Act, no encumbrance of any nature shall be created against the property, though such an encumbrance may be created only against each apartment and the percentage of undivided interest in the common areas and facilities appertenant to such apartment, in the same manner as in relation to any other separate parcel of property subject to individual ownership;

that the percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument;

that no apartment owner shall do anything which would be prejudicial to the soundness and safety of the property or reduce the value thereof or impair any easement or hereditament or shall add any material structure or excavate any additional basement or cellar;

that no apartment owner shall sell otherwise transfer or rent out his apartment for any purpose other than residential; and

that for the proper and effective administration of the property and for the due maintenance, repair and replacement of the common areas and facilities the apartment owners shall strictly comply with the provisions of the said Act and the bye-laws made thereunder and shall pay their share of common expenses as assessed by the Association of Apartment Owners, and that the failure to comply with any such requirement shall be a ground for action for damages or for other relief or reliefs at the instance of the Managing Committee on behalf of the Association of Apartment Owners or, in a proper case, by an aggrieved apartment owner.

Sole owner/all the owners of
the property

FORM B*[See sub-rule (1) of rule 3]*

This deed of apartment executed on this..... day
of..... One thousand nine hundred and
by Shri/Smt.....
S/o..... (H.E. Profession).....
residing at

Where as sub-section(2) of section 5 of the Kerala Apartment Ownership Act, 1983 stipulates that every apartment owner shall execute a deed of apartment in relation to his apartment;

And whereas I have purchased an apartment more particularly described hereunder;

Now, therefore, I execute this deed of apartment with the following details as provided in section 12 of the said Act.

(a) Description of the land:

Sy.No.

District

Taluk:

Village:

Boundaries:

East

South

North

West

Description of the land and its extent;

Details of declaration:

Liber:

Page:

Date of execution:

Date of serial No. of the registration under the Registration Act, 1908;

Date of filling with the competent authority and its reference No:

(b) Apartment No. as in the declaration and any other date for its proper identification;

(c) Statement of the use for which the apartment is intended and restrictions of its use, if any;

(d) The percentage of undivided interest appertaining to the apartment in the common area and facilities;

(e) any further details which the parties to the deed may deem desirable to set forth:

In witness whereof I..... have signed
this deed on the day, month and year first above written.

Signed by.....

In the presence of witness.

Sole owner/all the owners of
the property

FORM C

[See rule (4)]

Register of Declaration and deeds of apartments

Apartment No. shown in the plans annexed.....
 Floor of the building.....
 Name of building.....
 Street/Road No. where the building is situated.....

 Name of Street/Road where the building situated.....
 Name of builder.....
 (a) Survey No. of land.....
 Registration district and sub-district in which declaration and Deed
 of Apartment are registered.....

<i>Date of appli- cation for registration</i>	<i>Name of the Apartment Owner</i>	<i>Address</i>	<i>Date of Declaration</i>	<i>Date of Registration of the Declaration</i>
(2)	(3)	(4)	(5)	(6)

<i>Age of and in com- muni- ties</i>	<i>Date of Deed of Apartment</i>	<i>Date of registration of the Deed of Apartment</i>	<i>Price of Apart- ment settled</i>	<i>Date of Payment of Price</i>
	(8)	(9)	(10)	(11)

FORM D*(See rule 4)***Form of Index to Register**

<i>Name of the Apartment Owner</i>	<i>Place of residence</i>	<i>Situation of Property</i>	<i>Apartment No. floor of the building and name of the building</i>
(1)	(2)	(3)	(4)

<i>Nature of Deed (i.e. Declaration or Deed of Apartment) and consideration</i>	<i>Date of</i>		<i>Serial No. Volume and page</i>	<i>Remarks</i>
	<i>Execution</i>	<i>Registration</i>		
(5)	(6)	(7)	(8)	

FORM E
MEMORANDUM

(See rule 7)

forwarding herewith the certified copy of the declaration and deed
of the apartment owners mentioned in column (1) below, regard-
less of the apartment numbers mentioned in column (2) thereof, in respect
of the apartment situated in Sy.No.....

..... Village

..... District.

(1)
*name and address
of the apartment
owners*

(2)
Apartment No.

FORM F*(See rule 5 and 6)***Application for amendment of declaration submitted under section 5. (2) of the Kerala Apartment ownership Act, 1983**

To

The Competent Authority, appointed by the Government of Kerala Apartment Ownership Act, 1983.

The Application of..... of..... showeth:-

- (1) That on..... the applicant(s) submitted a Declaration in respect of under sub-section (2) of section 5;
- (2) That it is necessary in the following circumstances to amend the said declaration, namely:-
 - (a)
 - (b)
 - (c)
- (3) That a fresh Declaration incorporating therein the amendment(s) to be effected is submitted along with this application.
- (4) That in the circumstances stated in paragraph 2 hereof the following amendment(s) may be allowed, namely:-
 - (i) the entry appearing in..... of the Declaration to be amended/be substituted by the entries "....."
 - (ii)
 - (iii)

The petitioner(s) pray(s) that the amendment(s) aforesaid be accepted and that the fresh Declaration submitted along with this application be also accepted in place of the said Declaration which was submitted on.....

Place:

Petitioner(s)

FORM G

Declaration

[See rule (6)]

In pursuance of sub-section(2) of section 5 of the Kerala Apartment Ownership Act, 1983, read with sub-section(1) of section 11 thereof,

..... hereby declare that I/We are the Owner/Owners of the property situated at
..... Town/Village..... Taluk.....

and do hereby further declare that I/We submit the said property as being a building or buildings.....
..... for residential purposes to the provisions of the Act and all amendments hereto.

..... authenticated copies of the building plan and site plan prepared by and sanctioned by are appended hereto and marked respectively an Annexure "A" and "B". The relevant map is also appended herewith and marked Annexure "C".

I/We..... do hereby further furnish the following particulars as required under sub-section (i) of section 11 of the Act.

Description of the Property-

- (i) Area and description of the land upon which the building/buildings is/are constructed:
- (ii) Area and description of the building/buildings:
Buildings No.....
 - (a) Total plinth area:
 - (b) Number of storeys:
 - (c) Number of apartments:
 - (d) Other particulars, if any:
- (iii) Area and description of common areas and facilities:
 - (a) Lawn, Parks etc:
 - (b) Road, Pathways:
 - (c) Other common areas, if any:
 - (d) Water supply arrangements:
 - (e) Street lights within the property:
 - (f) Internal drainage:
 - (g) Other common facilities, if any:
- (iv) Description of the limited common areas and facilities if any stating to which apartments their use is reserved
- (v) Value of the property
- (vi) Nature of interest of the owner/owners in the property
- (vii) Existing encumbrances, if any, affecting the property.

B. Description of the limited common areas and facilities, in respect of each building:

- (a) Foundation and main wall of the building/buildings.
- (b) Stairway:
- (c) Water Tank:
- (d) Plumbing network:
- (e) Electric wiring network:
- (f) Other common areas:

C. Description of each apartment of each building - Apartment No.....of building No.....

- (a) Location
- (b) Approximate area:
- (c) Number of rooms:
- (d) Immediate common area to which it has access:
- (e) Any other information necessary for its proper identification:
- (f) Value of the apartment:

D. Percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes including voting.

E. The name of a person to receive service of process in the cases as provided under the provisions of the Act, together with the residence or place of business of such persons which shall be within the city, municipality, township or panchayat in which the building is located.

F Other particulars, if any:

3. I/We..... do hereby further declare Covenant and undertake as follows:

- (i) that each apartment constitutes a single residential unit, transferable and heritable as such, but shall not be partitioned or subdivided for any purpose whatsoever;
- (ii) that each apartment owner, present or future, shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration and appertenant to such apartment;
- (iii) that the common areas and facilities, general or restricted shall remain undivided and that no owner shall bring any action for partition or division thereof so long as the property remains submitted to the provisions of the Act;
- (iv) that the percentage of the undivided interest in the general or restricted common areas and facilities, as expressed in the Declaration, shall not be altered except with the consent of all the apartment owners expressed in an amended Declaration duly executed and registered as provided in the said Act;

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- (v) that during the period the property remains subject to the said Act, no encumbrance of any nature shall be created against the property, though such an encumbrance may be created only against each apartment and the percentage of undivided interest in the common areas and facilities appertenant to such apartment, in the same manner as in relation to any other separate parcel of property subject to individual ownership;
- (vi) that the percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument;
- (vii) that no apartment owner shall do anything which would be prejudicial to the soundness and safety of the property or reduce the value thereof or impair any easement or hereditament or shall add any material structure or excavate any additional basement or cellar;
- (viii) that no apartment owner shall sell, otherwise transfer or rent out his apartment for any purpose other than residential; and
- (ix) that for the proper and effective administration of the property and for the due maintenance, repair and replacement of the common areas and facilities the Apartment Owners shall strictly comply with the provisions of the said Act and the bye-laws made thereunder and shall pay their share of common expenses as assessed by the Association of Apartment Owners, common expenses as assessed by the Association of Apartment Owners, and that the failure to comply with any such requirement shall be a ground for action for damages or for other relief or relieves at the instance of the Managing Committee on behalf of the Association of Apartment Owners or in a proper case, by an aggrieved Apartment Owner. In witness whereof I/We have set our hands this.....
".....day of..... 19..... and solemnly declare that what is stated in is true to my/our knowledge and belief.

Sole Owner/or all the Owners of the property.



NOTIFICATIONS

3

(1)

* In exercise of the powers conferred by sub-section (3) of section 1 of the Kerala Apartment Ownership Act, 1983 (5 of 1984), the Government of Kerala hereby appoint the 1st day of August, 1985 as the date on which the said Act shall come into force in the areas mentioned in the Schedule below:

Schedule

Sl. No.	Area	Sl. No.	Area
1.	Trivandrum city	2.	Cochin city
3.	Calicut city	4.	Quilon Municipality
5.	Alleppey Municipality	6.	Kottayam Municipality
7.	Changanacherry Municipality	8.	Trichur Municipality
9.	Palghat Municipality	10.	Tellicherry Municipality

Explanatory Note

(This is not part of the notification but is intended to indicate its general purport.)

Under sub-section (3) of section 1 of the Kerala Apartment Ownership Act, 1983, the Government have to appoint a date for the commencement of the Act specifying also the different areas where the provisions in the Act will apply. The Notification is intended to achieve the above purport.

(2)

** In exercise of the powers conferred by sub-section (3) of section 1 of the Kerala Apartment Ownership Act, 1983 (5 of 1984), the Government of Kerala hereby appoint the 1st day of October, 1988 as the date on which the said Act shall come into force in the whole of the State of Kerala except in the Areas, where the said Act has already been brought into force with effect from 1-8-1985 as per the Notification No. G.O. (MS) 27/85/Housing dated the 31st July, 1985 published as SRO No. 1062/85 in the Kerala Gazette Extraordinary No. 618 dated the 1st August, 1985.

Explanatory Note

(This is not part of the notification but is intended to indicate its general purport)

As per Notification No. G.O. (MS) 27/85/Housing dated the 31st July, 1985 published as SRO No. 1062/85 Government appointed the 1st day of August, 1985 as the date on which the Kerala Apartment Ownership Act was brought into force in the three Cities and seven Municipalities of the State. Government have now decided to appoint 1st day of October, 1988 as the date on which the said Act shall come into force in the remaining part of the State of Kerala.

(3)

*** In exercise of the powers conferred by clause (j) of section 3 of the Kerala Apartment Ownership Act, 1983 (5 of 1984), the Government of Kerala hereby authorise the Deputy Collector (Housing) to perform the functions of the Competent Authority under the said Act for the areas within his respective jurisdiction.

* Issued under Noti. G.O. (MS) No. 27/85/Housing dt. 31-7-1985 pub. in K.G. Ex. No. 618 dt. 1-8-1985 as SRO 1062/85.

** Issued under G.O. (MS) No. 38/88/Housing dt. 23-9-1988 pub. in K.G. Ex. No. 836 dt. 24-9-1988 as SRO 1153/88.

*** Issued by G.O. (MS) 36/97/Hsg. dt. 25-6-1997 pub. in K.G. Ex. No. 828 dt. 25-6-1997 as SRO 482/97.

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