

**28. Variation of strata scheme upon damage or destruction of building**

- (1) Where a building shown on a registered strata plan is damaged or destroyed, the District Court may, on an application by the strata company or by a proprietor or a registered mortgagee of a lot within the strata scheme, make an order for or with respect to the variation of the existing strata scheme or the substitution for the existing strata scheme of a new strata scheme.
- (2) An insurer who has effected insurance on the building, or any part of the building, against damage to or destruction of the building has the right to appear, in person or by counsel, on an application to the District Court under this section.
- (3) Without limiting the generality of subsection (1), an order made under that subsection may include such directions for or with respect to any one or more of the following matters as the District Court considers necessary or expedient —
  - (a) the reinstatement in whole or in part of the building;
  - (b) the transfer or conveyance of the interests of the proprietors of lots that have been damaged or destroyed to the other proprietors in proportion to their unit entitlements;
  - (c) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement;
  - (d) the application of insurance moneys received by the strata company in respect of damage to or destruction of the building;
  - (e) the payment of moneys to or by the strata company or any one or more of the proprietors;
  - (f) the amendment of the registered strata plan, in such manner as the District Court thinks fit, so as to include any addition to the common property;
  - (g) the payment to a mortgagee of a lot of money received by the strata company from an insurer of the building;
  - (h) any matter in respect of which it is, in the opinion of the District Court, just and equitable in the circumstances of the case to make provision in the order;
  - (i) the imposition of such terms and conditions as the District Court thinks fit.
- (4) The District Court may from time to time amend any order made under this section.
- (5) An order made under this section shall take effect —
  - (a) except as provided in paragraph (b), on the day specified in the order or the day when the order is lodged for registration with the Registrar of Titles, whichever is the later;
  - (b) in the case of an order made under this section as applied by section 29, on the day on which the taking referred to in the order takes effect.
- (6) Where the District Court is of the opinion that an order should not be made under this section —

- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 31; and
  - (b) where it makes such a direction —
    - (i) the application the subject of the direction shall be deemed to be made under section 31 by a person entitled to make the application; and
    - (ii) the applicant under subsection (1), as well as any other, person entitled to appear and be heard under section 31, is entitled to appear and be heard on the hearing of the application.
- (7) On any application under this section, the District Court may make such order for the payment of costs as it thinks fit.

*[Section 28 amended by No. 58 of 1995 s. 30 and 93(1)<sup>5</sup>; No. 74 of 2003 s. 112(5).]*