

RULES FOR THE STRATA APPEALS TRIBUNAL

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The following Notification is, by command of His Excellency the Governor-General, published for general information.

DIONNE TRACEY DANIEL, (MRS.)
Governor-General's Secretary.

GENERAL NOTICE

MISCELLANEOUS

THE REGISTRATION (STRATA TITLES) (AMENDMENT) ACT, 2009

Pursuant to section 15A and paragraph 6(4) of the Fourth Schedule of the Registration (Strata Titles) (Amendment) Act, 2009, ("the Act"):

RULES FOR THE STRATA APPEALS TRIBUNAL

1. *General*

- 1.1. Where, in any proceeding, a question of procedure arises to which these Rules do not provide an answer, or the answer they do provide is incomplete, the question shall, subject to any relevant provision, be determined in such manner as the Appeals Tribunal directs.
- 1.2. The Appeals Tribunal may, in the course of conducting its own proceedings, vary or supplement any of these Rules if it is fair and equitable to do so or to provide for a more expeditious or informal process, as the circumstances and considerations of fairness permit.
- 1.3. No proceeding is invalid by reason only of a defect in form or a technical irregularity.

- 1.4. Notwithstanding anything to the contrary the Appeals Tribunal may extend or abridge any of the time limits fixed by these Rules or otherwise fixed by the Appeals Tribunal, either before or after their expiry.

2. *Definitions*

In these rules, unless the context otherwise requires:

“Act” means the Registration (Strata Titles) Act.

“Appeals Tribunal” means the Tribunal established by Section 15A of the Act.

“Appellant” means any person who has a right of appeal under the Act to the Appeals Tribunal and has filed a notice of appeal.

“Chairman” means Chairman of the Appeals Tribunal.

“Commission” means the Commission of Strata Corporations established by section 3A of the Act.

“the Corporation” means, in relation to any registered strata plan, the body incorporated by section 4 of the Act.

“Day” means a business day in the Island of Jamaica and excludes Saturdays, Sundays and public holidays.

“Filing” means effective delivery of a document to the Commission and its receipt by the Commission during the office hours of the Appeals Tribunal as communicated from time to time.

“Decision” includes action, ruling, direction, order or proposal.

“Party” means the Corporation, the Commission, a person appealing a decision of the Corporation or Commission, any person given party status by the Appeals Tribunal, or a person specified as a party by operation of Law.

“Public Holiday” means a public holiday as described in section 8(2) of the Interpretation Act.

“Respondent” means the Commission or Corporation from whose decision the appeal is filed, any person who defends any appeal filed under the Act, to the Appeals Tribunal, any person given party status by the Appeals Tribunal or a person specified as a party by operation of law.

“Service” means the effective delivery of a document to a party or to the authorized representative of that party.

3. *Appeal Process*

- 3.1. Any person aggrieved by a decision of the Corporation or Commission may, appeal to the Appeals Tribunal by filing with the Commission a Notice of Appeal in the form or to the effect of Form 11 hereto within thirty (30) days from the date of the decision.

- 3.2. A Notice of Appeal shall include:

- (a) The name and address of the Appellant;
- (b) The name of the Appellant’s Attorney (if the Appellant is represented) and their address for service of documents, email address, telephone number and facsimile number if applicable and the address for service of all other parties affected by the appeal.
- (c) Date of decision being appealed against;
- (d) Particulars of the decision of the Corporation or Commission against which the appeal is being made;
- (e) The grounds of appeal;
- (f) Copies of the relevant documents which were before the Corporation or Commission;
- (g) The relief or order or outcome that the Appellant is seeking; and
- (h) A copy of the Decision or Order which is the subject of the appeal must wherever practicable be attached to the Notice of Appeal.

- 3.3. Every Notice of Appeal shall be signed by the Appellant or the Appellant’s Attorney-at-Law and shall be addressed to the Chairman.

- 3.4. A copy of the Notice of Appeal and relevant documents shall be served on the Respondent to the Appeal within the 30 day period prescribed in Rule 3.1.

- 3.5. Every other document filed in the appeal must contain an address within the jurisdiction at which the party filing the document will accept service of documents, email address, telephone number and facsimile number if applicable.

4. *Filing And Service of Documents*

- 4.1. A document may be filed by:

- (a) Hand delivery at the office of the Commission;
- (b) Courier service at the office of the Commission;

- (c) Facsimile; or
 - (d) Any other means directed by the Appeals Tribunal.
- 4.2. Where a filing is made by facsimile, the document shall include a cover page indicating:
- (a) The name, address and telecommunications number of the sender;
 - (b) The name or office of the person with whom it is to be filed;
 - (c) The date and time the document is transmitted;
 - (d) The total number of pages transmitted, including the cover page;
 - (e) The telephone number from which the document is transmitted; and
 - (f) The name and telecommunication numbers of a person to contact if a problem arises with the transmission of the facsimile.
- 4.3. When filing a document, otherwise than by facsimile, a party shall provide the original and three copies of each document to the Appeals Tribunal.
- 4.4. Filing of documents shall be done Mondays to Fridays, between the hours of 10:00 a.m. and 4:00 p.m.
- 4.5. Where documents are filed by facsimile or other electronic means, the original and three copies of the documents filed shall be delivered by twelve noon of the next day.
- 4.6. The Commission shall date stamp all documents when they are received and a document is deemed to be filed as at that date.
- 4.7. Service of documents by one party on the other shall be made on any day between the hours of 10:00 a.m. and 4:00 p.m.
- 4.8. Service may be made by:
- (a) Personal service on a party or the party's authorized representative;
 - (b) Courier service;
 - (c) Prepaid registered post;
 - (d) Facsimile; or
 - (e) Any other means directed by the Tribunal.
- 4.9. Where service is made by facsimile the document shall include a cover page indicating:
- (a) The name, address and telephone number of the sender;
 - (b) The name or office and facsimile number of the person to be served;
 - (c) The date and time the document is transmitted;
 - (d) The total number of pages transmitted including the cover page; and
 - (e) The name and telecommunication number of a person to contact if a problem arises with transmission of the facsimile.
- 4.10. Where service is made by facsimile or other electronic means, a copy of the documents shall be delivered by twelve noon of the next day.
- 4.11. A document which is served in accordance with these Rules shall be deemed to be served on the day shown in the following table—

Method of Service	Deemed date of service
Registered Post	21 days after the date indicated on the Post Office receipt.
Courier Delivery	3 business days after the date indicated on the courier receipt.
Leaving document at a permitted address	the business day after leaving the document.
Fax	(a) if it is transmitted on a Business day before 4 pm: the day of transmission; or (b) in any other case, the business day after the day of transmission.
Other electronic method	the business day after transmission.

- 4.12. Any document served after 4 p.m. on a business day or at any time on a day other than a business day is treated as having been served on the next business day.
- 4.13. In this rule ~~the~~ business day means any day other than—
- (i) a Saturday, Sunday or Public Holiday; or
 - (ii) any other day on which the Commission is closed.”
- 4.14. Service may be proven by evidence of signed confirmation by the party or the party’s authorized representative, inclusive of details in respect of the full name, date, time and method of service.
- 4.15. The Appeals Tribunal may direct a party who has served a document to file an affidavit of service that indicates how, when, where and on whom service was made.

5. *Computation of Time*

5.1. In computing time for the purposes of these Rules, the following shall apply:

- (a) A period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happened or the act or thing done;
- (b) If the last day of the period is Saturday, Sunday or a public holiday (which days are referred to as excluded days) the period shall include the next following day, not being an excluded day;
- (c) When any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day, not being an excluded day.

5.2. Where a document is served after 4:00 p.m. or on an excluded day, the document shall be deemed to have been served on the next following day that is not an excluded day.

6. *Response to Notice of Appeal*

6.1. The Respondent to the Notice of Appeal shall, within twenty one (21) days of being served with a copy of the Notice of Appeal and accompanying documents pursuant to Rule 3.4, file with the Appeals Tribunal and serve on the Appellant a written statement of the reasons for the decision in respect of which the appeal is made and the reasons, if any, for controverting the contents of any documents served by the Appellant.

7. *Record of the Appellant*

7.1. The Appellant shall, within twenty one (21) days of receiving the Respondent’s reasons, file six (6) copies of the Appellant’s record with the Appeals Tribunal and serve one (1) copy on the Respondent to the appeal.

7.2. The Appellant’s record shall include the following:

- (a) Notice of Appeal together with the accompanying documents filed with the Appeals Tribunal and served on the Respondent;
- (b) Supporting affidavits;
- (c) Written submissions.

7.3. Written submissions shall include the following:

- (a) The facts or evidence on which the Appellant intends to rely;
- (b) A statement of the points in issue;
- (c) The arguments in support of the appeal;
- (d) The relief being sought; and
- (e) Copies of any legal authorities on which the Appellant intends to rely.

8. *Record of the Respondent*

8.1. The Respondent to the appeal shall, within twenty one (21) days of service of the Appellant’s record file six (6) copies of the Respondent’s record with the Appeals Tribunal and serve one (1) copy on the Appellant.

8.2. The record of the Respondent to the appeal shall include the following:

- (a) The Respondent’s response to the Notice of Appeal and all accompanying documents;
- (b) Supporting affidavits;
- (c) Written submissions.

8.3. Written submissions shall include the following:

- (a) The facts or evidence on which the Respondent intends to rely;
- (b) A statement of the points in issue;
- (c) The arguments in response to the appeal;

- (d) The desired outcome of the appeal;
- (e) Copies of any legal authorities on which the Respondent intends to rely.

9. *Parties to Proceedings*

- 9.1. The Appeals Tribunal may declare to be a party to any proceedings a person who satisfies the Appeals Tribunal that person has a substantial interest in the proceedings.
- 9.2. A person who is declared to be a party to any proceedings pursuant to Rule 9.1 may appear and be heard in that proceeding and may, at the Appeals Tribunal's sole discretion, produce evidence.

10. *Interim Action by the Appeals Tribunal*

- 10.1. The Appeals Tribunal may require the Appellant or the Respondent to the appeal to furnish in writing such other information as it may request, within such time as it may stipulate in its requirement.
- 10.2. The Appeals Tribunal may, of its own volition or on the application of the Appellant, or the Respondent, issue directions as to the procedure to be adopted in the conduct of the appeal. These directions may include:
 - (a) Extending any time limit for making an appeal or carrying out any procedure pursuant to these Rules;
 - (b) Suspending the effect of any decision issued by the Corporation or Commission;
 - (c) Allowing the Respondent or the Appellant to provide further information or supplementary statements or amending any document or response previously issued;
 - (d) Providing, where two or more appeals have been filed in respect of the same matter and covering the same interests and issues, that the appeals be consolidated or heard together.
- 10.3. Where a party applies to the Appeals Tribunal for the issue of directions pursuant to Rule 10.2, that party shall at the same time serve a copy of the application on the other party, which party shall, if it wishes to contest that application, file a written response with the Appeals Tribunal within seven (7) days of receiving the copy of the application, and at the same time serve a copy of that response on the applicant.
- 10.4. The Appeals Tribunal may determine any interim applications by a party on the basis of the written submissions or may, in addition, hear evidence from the parties and their respective witnesses.
- 10.5. Where the Appeals Tribunal decides that a hearing for interim directions should be held, the Chairman shall set a date, time and place for the hearing and the Commission shall, by notice in writing, notify the parties accordingly.
- 10.6. Interim hearings shall be held in private unless the Appeals Tribunal determines, on its own initiative or on the application of either party, that the hearing should be held in public.
- 10.7. Once the respondent to the application has been notified, at least three (3) days before the hearing or at such time as may be directed by the Chairman, the applicant shall file with the Appeals Tribunal four (4) sets of all relevant documents, duly indexed.

11. *Powers of Appeals Tribunal*

- 11.1. The Appeals Tribunal may:
 - (a) Instead of holding an oral hearing deal with a matter on written representations submitted by the parties;
 - (b) Direct that any evidence be given in written form;
 - (c) Deal with a matter without the attendance of any parties;
 - (d) Hear two (2) or more appeals on the same occasion;
 - (e) Direct that notice of any appeal or application be given to any person; or
 - (f) Take any other step, give any other direction or make any other order for the purpose of managing the appeal.

12. *Conduct of Hearing of Appeal*

- 12.1. The Chairman shall, after receiving the Appellant's and Respondent's Record whichever is later, set a time, date and place for the hearing of the appeal and the Commission shall by notice in writing at least twenty one (21) days before the hearing notify the parties.
- 12.2. An Appellant may be represented at a hearing by any person authorized in writing by him in that behalf.
- 12.3. Where either party to the appeal intends to make an application to adduce new evidence at a hearing, that party shall disclose that evidence to the other party no later than fourteen (14) days prior to the hearing.
- 12.4. A party to whom evidence is disclosed under paragraph 12.3 may object to the new evidence being adduced by filing with the Appeals Tribunal and serving on the Applicant submissions in support of its objection within seven (7) days of the evidence having been disclosed to it.
- 12.5. Upon receipt of submissions under paragraph 12.4 the Appeals Tribunal shall conduct a hearing into the objection within a reasonable time and may make such orders as it deems fit.
- 12.6. Where the Appeals Tribunal orders a hearing to be held in private, it may be attended only by the parties, their authorized representatives, and any other person allowed by the Appeals Tribunal.

- 12.7. The Appeals Tribunal is not bound by the technical rules of evidence in the conduct of the hearing and deliberation of the decision under appeal.
- 12.8. Subject to paragraph 1(3) of the Fourth Schedule to the Act no final decision shall become effective until affirmed by a majority of the members of the Appeals Tribunal and notified to the parties.

13. *Decision of the Tribunal*

- 13.1. Within a reasonable time of the hearing, the Tribunal shall give its decision in writing and may allow the appeal and set aside or vary the decision of the Corporation or Commission or dismiss the appeal and confirm the decision of the Corporation or the Commission, or any part thereof, as the case may be.
- 13.2. The Appeals Tribunal shall forward a copy of its decision to the Corporation or Commission and a copy to the Appellant, together with a written statement of the reasons for its decision.

14. *Withdrawal of Appeal*

- 14.1. An Appellant may withdraw a Notice of Appeal—
- (a) Before the hearing, by filing a notice in writing with the Appeals Tribunal and serving same on the Respondent to the appeal;
 - (b) At the hearing, by way of motion with the consent of the Appeals Tribunal.
- 14.2. A party may by motion seek to discontinue its participation in the proceeding at any time before a final decision.
- 14.3. The Appeals Tribunal may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.

15. *Failure of Party to Attend Appeal*

- 15.1. Where neither party appears at the appeal and the Appeals Tribunal is satisfied that the parties have received notice of the hearing in accordance with these Rules, the Appeals Tribunal may strike out the appeal.
- 15.2. Where only one party appears, the Appeals Tribunal may proceed in the absence of the other if satisfied that the party who does not appear has received notice of the hearing in accordance with these Rules.

16. *Application to Set Aside Decision in Party's Absence*

- 16.1. A party who was not present at an appeal at which a decision was made or the appeal struck out in the absence of that party, may apply to set aside that order.
- 16.2. The application must be made within 14 days after the date on which the decision was served on the applicant.
- 16.3. The application to set aside the order must be supported by evidence on affidavit showing—
- (a) a good reason for failing to attend the hearing; and
 - (b) that it is likely that had the applicant attended some other decision might have been made.

17. *Adjournment*

- 17.1. The Appeals Tribunal may of their own motion, or upon the application of any party, adjourn the appeal upon such terms as to costs, or otherwise as to the Appeals Tribunal may appear just.

18. *Costs and Recovery of Costs*

- 18.1. The Appeals Tribunal may order that the unsuccessful party to the appeal, pay the costs of another party and the Appeals Tribunal's costs of the proceeding.
- 18.2. The Appeals Tribunal's costs of a proceeding consist of the expenses, including costs of any investigation that the Appeals Tribunal and the Commission incurred in connection with the proceeding.
- 18.3. In the absence of agreement as to costs the successful party shall lay that party's bill of costs calculated in accordance with the Supreme Court schedule of fees and rules as to costs, and shall be taxed by the Appeals Tribunal and the quantum of costs thereby determined.
- 18.4. Any costs ordered by the Appeals Tribunal to be paid, may be recovered in the Supreme Court or Parish Court by or on behalf of the successful party as a civil debt due.

19. *Sittings of Appeals Tribunal*

- 19.1. The sittings of the Appeals Tribunal will take place over three (3) terms as follows:
- (a) The 7th January to the Friday before Good Friday.
 - (b) The first Wednesday after Easter Monday to the second Thursday of July.
 - (c) The 16th September to the second Thursday of December.

Dated the 23rd day of August, 2016.

THE HONOURABLE MR. JUSTICE FERDINAND A. SMITH,
Chairman.