

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)*  
*(Assented to 8 July 2005.)*

# ACT

To amend the Sectional Titles Act, 1986, so as to amend the definition of "exclusive use area"; to increase the percentage deviation in the participation quota as a result of the extension of any section in a scheme; to provide for the registration of a plan of extension where a scheme is extended by the addition of a section; to extend the types of real rights which may be registered against a portion of common property; to include imprisonment in a penalty provision; and to provide anew for the non-joinder of members where judgment has been given against the body corporate; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 95 of 1986, as amended by section 1 of Act 63 of 1991, section 1 of Act 7 of 1992, section 1 of Act 15 of 1993, section 1 of Act 44 of 1997 and section 1 of Act 29 of 2003**

1. Section 1 of the Sectional Titles Act, 1986 (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (1) for the definition of "exclusive use area" of the following definition:

" **'exclusive use area'** means a part or parts of the common property for the exclusive use by the owner or owners of one or more sections [ **as contemplated in section 27**];".

**Amendment of section 24 of Act 95 of 1986, as amended by section 14 of Act 63 of 1991, section 5 of Act 7 of 1992, section 17 of Act 44 of 1997 and section 5 of Act 29 of 2003**

2. Section 24 of the principal Act is hereby, amended by the substitution in subsection (6) for paragraph (d) of the following paragraph:

"(d) any sectional mortgage bond to which the section may be subject, together with a certificate by a conveyancer stating that there is not a deviation of more than **[five]** 10 per cent in the participation quota of **[a section or sections]** any section as a result of the extension, or if there is a deviation of more than **[five]** 10 per cent, that the mortgagee of each section in the scheme has consented to the registration of the sectional plan of extension of a section; and".

**Amendment of section 25 of Act 95 of 1986, as amended by section 15 of Act 63 of 1991, section 6 of Act 7 of 1992, section 18 of Act 44 of 1997 and section 6 of Act 29 of 2003**

3. Section 25 of the principal Act is hereby amended by the insertion of the following subsection after subsection (5):

"(5A) (a) If the right reserved in terms of subsection (1) is exercised the developer or his or her successor in title shall immediately after completion of the relevant unit apply for the registration of the relevant plan of extension and the inclusion of such unit in the relevant sectional title register.

(b) If the developer or his or her successor in title fails to take such steps and fails to register the relevant plan of extension within 90 days of completion for occupation of the unit, the developer or his or her successor in title shall be liable to the body corporate for the amounts payable in terms of section 37(1) as if the unit had been included in the relevant sectional title register on the date of completion.

(c) The certificate contemplated in section 15B(3)(a)(i)(aa) shall not be issued unless the amounts in question are paid to the body corporate."

**Amendment of section 27 of Act 95 of 1986, as amended by section 17 of Act 63 of 1991, section 20 of Act 44 of 1997 and section 8 of Act 29 of 2003**

4. Section 27 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) A right to the exclusive use of a part of common property registered in favour of an owner of a section, shall for all purposes be deemed to be a right to urban immovable property [which admits of being mortgaged] over which a mortgage bond lease contract or personal servitude of usufruct, usus or habitatio may be registered."

**Amendment of section 36 of Act 95 of 1986, as amended by section 9 of Act 7 of 1992**

5. Section 36 of the principal Act is hereby amended by the substitution in subsection (7) for paragraph (b) of the following paragraph:

"(b) A developer who fails to comply with any provision of paragraph (a) or (aA), shall be guilty of an offence and liable on conviction to a fine [not exceeding R1 000] or to imprisonment for a period not exceeding two years."

**Amendment of section 47 of Act 95 of 1986**

6. Section 47 of the principal Act is hereby amended by the substitution for the proviso to subsection (1) of the following proviso:

"Provided that any member who [is so required to make a payment to a judgment creditor after he has paid to the body corporate any, contribution which he was required to pay to that body corporate in respect of the same debt, shall be entitled to obtain a refund from the body corporate of the amount of the payment so made to the said creditor] has paid the contributions due by him or her in terms of section 37(1) to the body corporate in respect of the same debt prior to the judgment against the body corporate may, not be joined as a joint judgment debtor in respect of the judgment debt."

**Short title**

7. This Act is called the Sectional Titles Amendment Act, 2005.