

- (e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

"(4) A right reserved in terms of subsection (1) **[or]**, vested in terms of subsection (6) or registered in terms of subsection (6A), and in respect of which a certificate of real right has been issued —";

- (f) by the substitution in subsection (10) for paragraph (d) of the following paragraph:

"(d) certificates of registered sectional title in the prescribed form in favour of the developer, his or her successor in title or the body corporate, as the case may be, in respect of each section and a certificate or certificates of real right in respect of the rights of exclusive use reflected on the plan of extension;"

- (g) by the substitution in subsection (10)(dA) for subparagraphs (ii) and (iii) of the following subparagraphs, respectively:

"(ii) the certificate or certificates of real right in respect of a right of exclusive use as contemplated by subsection (10) **[(c)]** (d) and section 27 (1); and

(iii) if applicable, the certificate or certificates of real right in respect of the remainder of the right reserved in terms of subsection (1); and";

- (h) by the substitution in subsection (11) for paragraph (c) of the following paragraph:

"(c) simultaneously with the registration of the sectional plan of extension issue to the developer, his or her successor in title or the body corporate, as the case may be, a certificate of registered sectional title in respect of each section depicted on the sectional plan of extension and its undivided share in the common property, and a certificate or certificates of real right in respect of rights of exclusive use, subject to any mortgage bond registered against the title deed of the right of extension, furnish the local authority concerned with a copy of such plan of extension and notify the Surveyor-General of the registration of such plan of extension, and thereupon the Surveyor-General shall amend the original sectional plan and the deeds office copy of the sectional plan to reflect such extension; and";

- (i) by the substitution for subsection (13) of the following subsection:

“(13) A developer or his or her successor in title who exercises a reserved right referred to in subsection (1), or a body corporate exercising the right referred to in subsection (6), shall be obliged to erect and divide the building or buildings into sections and to delineate areas of the common property subject to rights of exclusive use strictly in accordance with the documents referred to in subsection (2) [**due regard being had to changed circumstances which would make strict compliance impracticable, and an owner of a unit in the scheme who is prejudiced by his failure to comply in this manner may apply to the Court, whereupon the Court may order proper compliance with the terms of the reservation, or grant such other relief, including damages, as the Court may deem fit**]: Provided that any deviation from the particulars referred to in the plan to scale, schedule or any other documents referred to in subsection (2) (a), (b), (c) or (d), may only be permitted upon unanimous resolution of the body corporate, together with the written consent of the bondholders and the holders of registered real rights over every section existing on the date of the taking of the unanimous resolution.”; and

- (j) by the insertion after subsection (13) of the following subsection:

“(13A) The unanimous resolution of the body corporate and written consent of the bondholders and holders of registered real rights, as contemplated in the proviso to subsection (13), must be filed with the Surveyor-General and proof of such filing in the form of a certificate signed by a conveyancer and endorsed by the Surveyor-General, must be submitted to the registrar for filing on the relevant sectional title register.”.

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, sections 8 of Act 29 of 2003; section 4 of Act 7 of 2005 and section 9 of Act 11 of 2010

11. Section 27 of the principal Act is hereby amended-

- (a) by the substitution in subsection (1)(d) for subparagraph (i) of the following subparagraph:

“(i) apply to the registrar for the issuing of a certificate or certificates of real right of exclusive use in its favour; and”;

- (b) by the substitution in subsection (1) for paragraph (e) of the following paragraph:
 "(e) The registrar shall, after consideration of the application in paragraph (d), issue such certificate or certificates in the prescribed form.";
- (c) by the substitution for subsection (1B) of the following subsection:
 "(1B) Upon compliance with subsection (1A) this Act shall apply with the necessary changes to such real right as if it had originally formed part of the application for the opening of the sectional title register and such certificate or certificates of real right shall be issued subject to any sectional mortgage bond against the land.";
- (d) by the substitution in subsection (4)(c) for subparagraph (i) of the following subparagraph:
 "(i) apply to the registrar for the issuing of a certificate or certificates of real right of exclusive use in its favour; and"; and
- (e) by the substitution in subsection (4) for paragraph (d) of the following paragraph:
 "(d) The registrar must issue such certificate or certificates in the prescribed form."

Short title

- 12. This Act is called the Sectional Titles Amendment Act, 2012

MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES AMENDMENT BILL, 2012

1. OBJECTS OF BILL

The Sectional Titles Amendment Bill, 2012 (hereinafter referred to as the Bill), seeks to amend the Sectional Titles Act, 1986 (Act No. 95 of 1986) (hereinafter referred to as "the Act"), in order to, amongst others-

- (a) amend certain definitions;
- (b) to further regulate notification of the intended establishment of schemes and the sale of units to lessees;
- (c) to provide for the Surveyor-General to investigate draft sectional plans and prescribed documentation;
- (d) to provide for the cancellation of registered sectional plans in a prescribed manner;
- (e) to regulate the issuing of a certificate of registered sectional title in respect of a fraction of an undivided share in a section;
- (f) to provide for the deletion of an obsolete reference;
- (g) to provide for the registration of a transfer of a part of the common property with the consent of the owners of the sections and the holders of registered real rights;
- (h) to provide for the endorsing of title deeds to reflect amended participation quota schedules;
- (i) to regulate the alienation of a portion of land over which a real right of extension or part thereof is registered;
- (j) to provide for the consent of holders of registered real rights over exclusive use areas to the alienation of common property;
- (k) to provide for the cession of a mortgage real right of extension and a mortgage real right of exclusive use area;
- (l) to provide for the cancellation of part of a section pursuant to an expropriation;
- (m) to increase the percentage deviation in the participation quota as a result of the extension of a section;
- (n) to further provide for the consent of bondholders with the registration of a sectional plan of extension;

- (o) to further regulate the lodgement of certificates and prescribed documentation with the registration of sectional plans of extension;
- (p) to provide for draft sectional plans and prescribed documentation to be lodged with the Surveyor-General;
- (q) to provide for the issuing of more than one certificate of real right of extension and more than one certificate of real right of exclusive use area; and
- (r) to provide for a deviation from the particulars of the plans to scale upon unanimous resolution of the body corporate and the consent of the bondholders and holders of registered real rights over sections.

2. CLAUSE BY CLAUSE ANALYSIS

2.1 CLAUSE 1

2.1.1 The current definition of "architect" refers to the Architects' Act, 1970 (Act No. 35 of 1970), which Act has since been repealed by the Architectural Profession Act, 2000 (Act No. 44 of 2000). The proposed amendment contained in clause 1(a) of the Bill seeks to correct this reference. In addition, there has been uncertainty in respect of which architects are qualified to sign certificates in terms of section 7(2)(a) of the Act, namely a certificate stating that a proposed division into sections and common property is not contrary to any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law that may affect the development. The proposed amendment provides clarity in this regard.

2.1.2 The current definition of "developer" provides, for purposes of sections 10 and 15B(3)(c) of the Act, for the inclusion of an agent or his or her successor in title, or any other person acting on behalf of any of the above-mentioned persons, to act on behalf of a developer. However, the definition does not include the developer's agent or his or her successor in title in respect of the approval of development schemes, as contemplated in section 4 of the Act. The proposed amendment contained in clause 1(b) of the Bill provides for such inclusion.

2.1.3 The proposed amendment of the definition of "land surveyor" in clause 1(c) of the Bill seeks to clarify which land surveyors may sign a section 7(2)(a)

certificate, similar to the position of architects as discussed in par. 2.1.1. It is also intended to reflect the correct short title of the Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984).

2.2 CLAUSE 2

The proposed amendment to section 4(3) of the Act is consequential to the amendment of the definition of "developer" that provides for the inclusion of an agent or his or her successor in title, or any other person acting on behalf of any of the above-mentioned persons, to act on behalf of a developer. Clause 2(a) and (b) of the Bill therefore seek to align section 4(3) of the Act with the amended definition of "developer".

2.3 CLAUSE 3

Section 7 of the Act deals with the approval of draft sectional plans by the Surveyor-General. However, section 7(2A) of the Act exempts the Surveyor-General from the responsibility to investigate the correctness or accuracy of documentation relating to the subdivision, consolidation and extension of sections, and the extension of sectional title schemes. Various problems are being experienced in respect of the deviation from particulars referred to in documentation relating to the extension of schemes and this result in schemes being extended in contradiction to the plans of scale relating to the extension of such schemes. The proposed amendment to subsection (2A), in clause 3 of the Bill, seeks to address this problem.

2.4 CLAUSE 4

Section 14 of the Act deals with the amendment and cancellation of sectional plans. However, the Act is silent on a procedure to follow with regard to the cancellation of a sectional plan upon an order of the court. Clause 4 of the Bill proposes a prescribed manner to be followed with the cancellation of such plans.

2.5 CLAUSE 5

Section 15B(5A) of the Act provides for the issuing of a certificate of registered sectional title in respect of a fraction of an undivided share of a section. A need has been identified to also include provisions in respect of the application by the owner of a section, as well as the lodgement and endorsement of the relevant bonds and title deeds. Clause 5 of the Bill therefore proposes the addition of new subsections to section 15B.

2.6 CLAUSE 6

- 2.6.1 Section 17 is silent with regard to the lodgement of the consent of owners of sections and holders of registered rights over sections with the registration of a transfer of a part of the common property. Section 17 does also not provide for the lodgement of the relevant title deeds of the sections and real rights for purpose of endorsement to reflect the new extent in the amended participation quota schedule, as a result of the transfer of a part of the common property. The amendments proposed in clauses 6(a) and (b) of the Bill seek to address the situation.
- 2.6.2 Section 17 makes provision for the cancellation of the registration of a section or a part thereof, as well as the cancellation of the registration of an exclusive use area or a part thereof, with the registration of a transfer of a portion of the common property. The section however does not provide a mechanism for the alienation of a portion of the common property on which a real right of extension or part thereof is registered. The proposed insertion of subsection (4C) as contained in clause 6(c) of the Bill will rectify this situation.
- 2.6.3 Section 17(5) of the Act provides for the title deeds of units, title deeds of rights registered over such units and the title deeds of exclusive use areas to be lodged for cancellation upon transfer of the whole of the land comprised in the common property. Section 17(5) is however silent with regard to the consent of holders of registered rights over exclusive use areas and the lodgement of such title deeds for purposes of cancellation. The amendments proposed in clause 6(d) of the Bill seek to address this issue.

2.7 CLAUSE 7

Section 18 of the Act makes the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937) applicable with the transfer of a mortgaged unit and mortgaged common property, and the cession of a mortgaged lease of a unit and mortgaged real right over a unit. The said section, however, is silent in respect of the cession of mortgaged real rights of extension and mortgaged real rights of exclusive use areas. Clause 7 of the Bill provides for the necessary inclusion.

2.8 CLAUSE 8

Section 19 of the Act deals with the expropriation of common property or rights therein, as well as the cancellation of the registration of a section affected by such expropriation. The Act, however, does not provide for the cancellation of the registration of part of a section pursuant to an expropriation. Clause 8(a) and (b) of the Bill contains proposed amendments aimed at rectifying the situation.

2.9 CLAUSE 9

Section 24 of the Act provides for the extension of the boundaries or floor area of a section in a scheme. If the deviation in the participation quota of a section is more than ten per cent as a result of the extension, the mortgagee of each section in the scheme must consent to the registration of the sectional plan of extension of the section. The small percentage deviation does not justify the time and cost to obtain consent from mortgagees for the registration of the sectional plan of extension. The proposal in clause 9 of the Bill seeks to clarify the uncertainty pertaining to the participation quota and to save time and cost by increasing the deviation percentage to 20 per cent.

2.10 CLAUSE 10

2.10.1 Section 25(1) of the Act provides for the extension of schemes upon unanimous resolution of the body corporate and bondholders. However,

bondholders do not form part of the 'unanimous resolution' of a body corporate. The amendment of section 25(1) to provide for the consent of the bondholders that exist on the date of the taking of the unanimous resolution, as contained in clause 10(a) of the Bill, aims to clarify the position.

2.10.2 The Act does not provide for the Surveyor-General to investigate the correctness or accuracy of documentation relating to the extension of sectional title schemes. Various problems are being experienced in respect of the deviation from particulars referred to in documentation relating to the extension of schemes, and this situation result in schemes being extended in contradiction to the plans of scale relating to the extension of such schemes. The insertion of section 25(1A) and the amendment of section 25(2), as contained in clauses 10(b), (c) and (d) provides for the filing of the documentation relating to the extension of the scheme, with the Surveyor-General, for purposes of investigation in respect of its correctness and accuracy. This amendment is in line with the amendment of section 7(2A), as proposed in clause 3 of the Bill.

2.10.3 Section 25(4) of the Act provides for a right of extension, as reserved by a developer in terms of section 25(1) or vested in a body corporate in terms of section 25(6), to be deemed immovable property that is capable of being mortgaged and transferred. Section 25(4) however does not include a right of extension that may be obtained by a developer in terms of section 25(6A). A section 25(6A) right of extension may be obtained in instances where a developer has not reserved such right in terms of section 25(1) and where a body corporate has not been established. Clause 10(e) of the Bill seeks to rectify this situation.

2.10.4 The Act provides for the issuing of more than one certificate of real right of extension and more than one certificate of real right of exclusive use areas at the opening of a sectional title register. The amendment of sections 25(10)(d), 25(10)(dA)(ii) and (iii), 25(11)(c), 27(1)(d)(i), 27(1)(e), 27(1B), 27(4)(c)(i) and 27(4)(d), as contained in clauses 10(f), (g) and (h) as well as clauses 11(a), (b), (c), (d) and (e), aim to rectify the position.

2.10.5 Various problems are being experienced in respect of the deviation of particulars referred to in documentation relating to the extension of schemes (see par. 2.10.2). The proposed amendment of section 25(13) and the insertion of section 25 (13A), in clauses 10(i) and 10(j), aims to rectify the position by providing for deviations to take place only upon unanimous resolution of the body corporate and with the consent of the bondholders and holders of registered real rights over sections.

2.12 CLAUSE 11

The Act provides for the issuing of more than one certificate of real right of extension and more than one certificate of real right of exclusive use areas at the opening of a sectional title register. The amendment of section 27 as referred to in par. 2.10.4 aim to rectify the position.

2.16 CLAUSE 12

Clause 12 contains the short title of the Bill.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Law Society of South Africa

The South African Council for the Architectural Profession

The South African Council for Professional and Technical Surveyors

The Banking Council of South Africa

The Institute of Estate Agents of South Africa

The National Association of Managing Agents

5. CONSTITUTIONAL IMPLICATIONS

None.

6. COMMUNICATION IMPLICATIONS

To be undertaken by the Department of Rural Development and Land Reform.

7. PARLIAMENTARY PROCEDURE

7.1. The State Law Advisers and the Department of Rural Development and Land Reform are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

7.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.