

REPUBLIC OF SOUTH AFRICA

SECTIONAL TITLES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36462 o of 15 May 2013)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B 11—2013]

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

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

To amend the Sectional Titles Act, 1986, so as to amend certain definitions; to further regulate notification of the intended establishment of schemes and the sale of units to lessees; to provide for the cancellation of registered sectional plans in a prescribed manner; to regulate the issuing of a certificate of registered sectional title in respect of a fraction of an undivided share in a section; to provide for the deletion of an obsolete reference; 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; to provide for the endorsing of title deeds to reflect amended participation quota schedules; to regulate the alienation of a portion of land over which a real right of extension or part thereof is registered; to provide for the consent of holders of registered real rights over exclusive use areas to the alienation of common property; to provide for the cession of a mortgage real right of extension and a mortgage real right of exclusive use area; to provide for the cancellation of part of a section pursuant to an expropriation; to further provide for the consent of bondholders with the registration of a sectional plan of extension; 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 to provide for matters connected therewith.

BE 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, Proclamation R9 of 31 January 1997, section 1 of Act 29 of 2003, section 1 of Act 7 of 2005, section 1 of Act 6 of 2006 and section 1 of Act 11 of 2010

1. Section 1 of the Sectional Titles Act, 1986 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution in subsection (1) for the definition of “architect” of the following definition: 10

“**architect**” means a person registered as **[an architect in terms of section 19 of the Architects’ Act, 1970 (Act No. 35 of 1970);** a professional architect in terms of section 18(1)(a)(i) of the Architectural Profession Act, 2000 (Act No. 44 of 2000), read with section 19 of that

Act and who has met the requirements set out in section 5(2) of this Act;”;

- (b) by the substitution in subsection (1) for paragraph (a) of the definition of “developer” of the following paragraph:

“(a) for the purposes of sections 4[(3)], 10 and 15B(3)(c), also the agent of any such person or his or her successor in title, or any other person acting on behalf of any of them; and”;

- (c) by the substitution in subsection (1) for the definition of “land surveyor” of the following definition:

“**‘land surveyor’** means a person registered as a professional land surveyor in the register prescribed in section 7(4)(a) of the Professional **[Land Surveyors’]** and Technical Surveyors’ Act, 1984 (Act No. 40 of 1984), and who has met the requirements set out in section 5(2) of this Act;”.

Amendment of section 4 of Act 95 of 1986, as amended by section 2 of Act 63 of 1991, section 2 of Act 15 of 1993, section 2 of Act 44 of 1997 and section 2 of Act 29 of 2003

2. Section 4 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph:

“(i) has been notified in writing by the developer, by letter delivered either personally or despatched by registered post, of a date, at least 14 days after the delivery or dispatch of such letter, as the case may be, of a meeting of such lessees to be held in the building in question, or in another building within a reasonable distance from the first-mentioned building, within the area of jurisdiction of the local authority concerned, at which the developer **[or his or her agent]** intends to be available to provide the lessees with—
(aa) such particulars of the relevant scheme as they may reasonably require from him or her; and
(bb) the information regarding their rights as set out in section 10 of this Act; and”;

- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) a meeting contemplated in paragraph (a)(i) has been held and the developer **[or his or her agent]** has been available thereat to provide the particulars contemplated in the said paragraph, and has answered all reasonable questions put to the developer **[or agent]** by the lessees present: Provided that a developer need not comply with this subsection if all such lessees have stated in writing that they are aware of their rights which shall also be set out in such statement and that they do not wish to purchase the proposed units which they occupy and a conveyancer has certified in writing that such statements have been received in respect of all the units in question: Provided further that a share block company applying for the approval of a development scheme need not comply with the requirements of this subsection if that share block company has, within a period of two years before such application, already complied with section 11A of the Share Blocks Control Act, 1980 (Act No. 59 of 1980).”.

Amendment of section 14 of Act 95 of 1986, as amended by section 8 of Act 63 of 1991, section 4 of Act 7 of 1992 and section 5 of Act 11 of 2010

3. Section 14 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) A registered sectional plan shall, subject to the provisions of subsection (6) and sections 17(6), 48 and 49, only be cancelled by an order of the Court, and the registrar shall give effect to any such cancellation by making the necessary endorsements and entries in his or her records in the prescribed manner, and shall

notify the Surveyor-General, who shall cancel the original sectional plan and the deeds office copy thereof.”.

Amendment of section 15B of Act 95 of 1986, as amended by section 10 of Act 44 of 1997, section 2 of Act 6 of 2006 and section 6 of Act 11 of 2010

4. Section 15B of the principal Act is hereby amended by the addition after subsection (6) of the following subsections:

“(7) A certificate of registered sectional title mentioned in subsection (5A) may be obtained upon written application in the prescribed form by the owner to the registrar.

(8) An application under subsection (7) shall be accompanied by—

- (a) the sectional title deed of the unit;
- (b) any sectional mortgage bond registered over the unit or over any registered real rights over the unit;
- (c) any title deeds of registered real rights over the unit; and
- (d) the certificate of registered sectional title in the prescribed form.

(9) Before issuing a certificate contemplated in subsection (7), the registrar must make upon the deeds and bonds as referred to in subsection (8) (a) to (c), an endorsement to the effect that a certificate of registered sectional title has been substituted for the said sectional title deed in respect of the share in question.

(10) Subject to subsection (9), the registrar must further make such entries as are necessary to give effect to this section and must, if the unit is mortgaged, endorse that fact upon the certificate.

(11) The provisions of subsections (8) to (10) apply, with the necessary changes, to an application for a certificate of registered sectional title or a certificate of real right, as contemplated in subsection (5)(a) hereof.”.

Amendment of section 17 of Act 95 of 1986, as amended by section 11 of Act 63 of 1991, section 11 of Act 44 of 1997, section 53 of Act 24 of 2003, section 4 of Act 29 of 2003 and section 5 of Act 6 of 2006

5. Section 17 of the principal Act is hereby amended—

(a) by the substitution in subsection (4A) for paragraph (b) of the following paragraph:

“(b) The Surveyor-General shall notify the registrar of a change or amendment of a sectional plan in terms of paragraph (a) which affects the description or extent of a section, and thereupon the registrar shall [**simultaneously with the registration of] register the transfer of the part of the land included in the scheme [**make the necessary endorsement against the title deeds in question: Provided that the registrar shall not register the transfer of the common property, unless the sectional title deed of the affected section is endorsed with the new extent as reflected in the amended participation quota schedule.**]**.”;

(b) by the insertion in subsection (4A) after paragraph (b) of the following paragraph:

“(bA)Registration of the transfer under paragraph (b) shall be effected upon written consent of the owner of the section and, where applicable, holders of any registered real rights over the section: Provided that the registrar shall not register the transfer of the common property unless the sectional title deed of the affected section and, where applicable, the title deeds of the holders of any registered real rights over the section is endorsed with the new extent as reflected in the amended participation quota schedule.”;

(c) by the addition after subsection (4B) of the following subsection:

“(4C) The provisions of subsection (4B) shall apply with the necessary changes where, in terms of subsection (1), it is sought to alienate a portion of land on which a real right of extension in terms of section 25 or any part of such right is registered.”; and

(d) by the substitution for subsection (5) of the following subsection:

“(5) When the whole of the land comprised in the common property shown on the sectional plan is transferred by the body corporate pursuant

to this section, the sectional title deeds of the owners of units **[and]**, the title deeds of the holders of any registered real right in the units, **[and]** the title deeds of the holders of exclusive use areas and the title deeds of the holders of any registered real right over the exclusive use areas, shall be surrendered to the registrar for cancellation, and the title deed of any other registered real right in the land or exclusive use area, together with the consent of the holder of such right, shall be surrendered to the registrar for endorsement and the registrar shall close the sectional title register and notify the Surveyor-General and the local authority that the sectional title register has been closed.”.

Substitution of section 18 of Act 95 of 1986

6. The following section is hereby substituted for Section 18 of the principal Act:

“Transfer of mortgaged unit, undivided share, common property or land, and cession of mortgaged lease or real right

18. The provisions of sections 56 and 57 of the Deeds Registries Act shall apply *[mutatis mutandis]* with **[reference]** the necessary changes to the transfer of any **[mortgage]** mortgaged unit or undivided share in a unit, the cession of any mortgaged lease of a unit or undivided share in a unit, the cession of any mortgaged real right in or over a unit or an undivided share in a unit, the cession of any mortgaged real right under sections 25 and 27 of this Act or an undivided share therein, and the transfer under section 17 of this Act of any mortgaged common property or land or an undivided share therein.”.

Amendment of section 19 of Act 95 of 1986, as amended by section 12 of Act 44 of 1997

7. Section 19 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

“(4) When land comprising common property on which a section or a part of a section is erected is transferred pursuant to an expropriation, the registrar shall cancel the registration of such section or part of such section in his or her records and shall endorse the deeds registry copy of the relevant title and any bond, lease or other registered document affected, to reflect the cancellation of the section or part of such section, and shall in like manner endorse the owner’s copy of the title deed or the holder’s copy of the bond, lease or other document whenever subsequently lodged at the deeds registry for any purpose.”; and

(b) by the substitution for subsection (5) of the following subsection:

“(5) The provisions of section 17(4) **[(b) and (a), (c) and (d), (4A), (4B) and (5)]**, shall apply with the necessary changes to the cancellation of a section or part of such section in terms of subsection (4).”.

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, section 6 of Act 29 of 2003, section 3 of Act 7 of 2005 and section 8 of Act 11 of 2010

8. Section 25 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) A developer may, subject to the provisions of section 4(2), in his or her application for the registration of a sectional plan, reserve, in a condition imposed in terms of section 11(2), the right to erect, complete or include from time to time, but within a period stipulated in such condition or such extended period as may be agreed upon (by unanimous resolution of the body corporate and with the consent of the bondholders [, from time to time] existing on the date of the taking of the unanimous resolution, which resolution and consent must be obtained by the notary and filed in his or her protocol) prior to the expiry of the stipulated

- period, by way of a bilateral notarial deed, for his or her personal account—”;
- (b) 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—”;
- (c) 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;”;
- (d) 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”;
- (e) 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”.

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

9. 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”;

- (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

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- 10.** This Act is called the Sectional Titles Amendment Act, 2013.

MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES AMENDMENT BILL, 2013

1. OBJECTS OF BILL

The Sectional Titles Amendment Bill, 2013 (“the Bill”), seeks to amend the Sectional Titles Act, 1986 (Act No. 95 of 1986) (“the Act”), in order to, amongst others—

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

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 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 3 of the Bill proposes a prescribed manner to be followed with the cancellation of such plans.

2.4 Clause 4

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 4 of the Bill therefore proposes the addition of new subsections to section 15B.

2.5 Clause 5

- 2.5.1 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 also does 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 clause 5(a) and (b) of the Bill seek to address the situation.
- 2.5.2 Section 17 makes provision for the cancellation of the registration of a section or part thereof, as well as the cancellation of the registration of an exclusive use area or 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 5(c) of the Bill will rectify this situation.
- 2.5.3 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 5(d) of the Bill seek to address this issue.

2.6 Clause 6

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 6 of the Bill provides for the necessary inclusion.

2.7 Clause 7

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 7(a) and (b) of the Bill contains proposed amendments aimed at rectifying the situation.

2.8 Clause 8

2.8.1 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 8(a) of the Bill, aims to clarify the position.

2.8.2 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 8(b) of the Bill seeks to rectify this situation.

2.8.3 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 clause 8(c), (d) and (e) or clause 9(a), (b), (c), (d) and (e), aim to rectify the position.

2.9 Clause 9

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 paragraph 2.8.3, aims to rectify the position.

2.10 Clause 10

Clause 10 contains the short title.

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.