

REPUBLIC OF SOUTH AFRICA

SECTIONAL TITLES AMENDMENT BILL

*(As amended by the Select Committee on Land, Agriculture and Environmental Affairs
(National Council of Provinces))*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 9D—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DEELTITELS

*(Soos gewysig deur die Gekose Komitee oor Landbou, Grond en Omgewingsake
(Nasionale Raad van Provinsies))*

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 9D—97]

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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.
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BILL

To amend the Sectional Titles Act, 1986, so as to delete, substitute or insert certain definitions; to delete provisions regarding the involvement of local authorities in respect of applications for sectional title schemes; 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 and section 1 of Act 15 of 1993

1. Section 1 of the Sectional Titles Act, 1986 (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the deletion in subsection (1) of the definition of “Administrator”;
- (b) by the substitution in subsection (1) for the definition of “Court” of the following definition:
 - “ ‘Court’ means the provincial or local division of the **[Supreme] High** 10
Court having jurisdiction and, for the purposes of section 44, a
magistrates’ court having jurisdiction;”;
- (c) by the substitution in subsection (1) for paragraph (a) of the definition of “developer” of the following paragraph:
 - “(a) for the purposes of sections **[9 and] 10 and 15B(3)(c), also** the agent 15
of any such person or his or her successor in title, or any other
person acting on behalf of any of them; and”;
- (d) by the insertion in subsection (1) after the definition of “land surveyor” of the following definition:
 - “ ‘lease’ for the purposes of section 17(1) means a lease which— 20
 - (a) was entered into for a period of not less than ten years;
 - (b) was entered into for the natural life of the lessee or of any other person mentioned in the lease; or

- (c) is renewable from time to time at the will of the lessee indefinitely or for periods which, together with the first period, amount in all to not less than 10 years;”;
- (e) by the substitution in subsection (1) for the definition of “local authority” of the following definition: 5
 “ ‘local authority’ means a municipality contemplated in section 151 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), exercising jurisdiction in the area in which the land is situated;”;
- (f) by the substitution in subsection (1) for the definition of “owner” of the following definition: 10
 “ ‘owner’ means, in relation to—
 (a) immovable property, subject to paragraph (b), the person registered as owner or holder thereof and includes the trustee in an insolvent estate, a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), the liquidator of a company or close corporation which is an owner, and the executor of an owner who has died, or the representative, recognised by law, of an owner who is a minor or of unsound mind or is otherwise under a disability, if such trustee, liquidator, executor or representative is acting within the scope of his or her authority; 15
 (b) immovable property, real rights in immovable property and notarial bonds—
 (i) registered in the names of both spouses in a marriage in community of property, either one or both of the spouses; 20
 (ii) registered in the name of only one spouse and forming part of the joint estate of both spouses in a marriage in community of property, either one or both of the spouses, 25
 and “owned” and “ownership” have a corresponding meaning;”;
- (g) by the substitution in subsection (1) for the definition of “sectional mortgage bond” of the following definition: 30
 “ ‘sectional mortgage bond’ means a [sectional] mortgage bond hypothecating—
 (a) a unit or an undivided share in a unit or land held under a separate sectional title deed; or
 (b) a registered lease or sub-lease of any such unit or undivided share in a unit or land; or 35
 (c) any other registered real right in or over any such unit or undivided share in a unit or [land] common property or the rights referred to in sections 25 and 27;”;
- (h) by the insertion in subsection (1) after the definition of “notary” of the following definition: 40
 “ ‘operative town planning scheme’ means a town planning scheme map and accompanying town planning scheme clauses prepared in terms of any law;”;
- (i) by the insertion in subsection (1) after the definition of “special resolution” of the following definition: 45
 “ ‘statutory plan’ means a land development objective prepared in terms of Chapter IV of the Development Facilitation Act, 1995 (Act No. 67 of 1995), an integrated development plan prepared in terms of section 10D(4)(b) or section 2 of Schedule 2A to the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other integrated plan, layout plan or package of plans in force in the area and which has or have been approved by a competent authority in terms of any law;” 50

Amendment of section 4 of Act 95 of 1986, as amended by section 2 of Act 63 of 1991 and section 2 of Act 15 of 1993 55

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

- (a) by the substitution for subsection (1) of the following subsection: 60
 “(1) A developer who intends to establish a scheme shall [make application to the local authority concerned for the approval of the scheme] cause a draft sectional plan to be submitted to the Surveyor-General in terms of section 7;”.

- (b) by the substitution for subsections (3) and (3A) of the following subsections respectively:

“(3) If **[one or more parts]** a part of a building which is **[or are]** comprised in a proposed scheme and which after a division of the building will constitute a unit **[or units]** therein, is **[or are]** wholly or partially let for residential purposes, a developer shall not **[make any application referred to]** cause a draft sectional plan to be submitted as contemplated in subsection (1), unless—

(a) every lessee of **[every]** a part which is so **[leased]** let for residential purposes—

(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 despatch 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

(ii) has at the same time, with the notice referred to in subparagraph (i), been provided by the developer with a certificate containing the prescribed particulars in respect of the relevant building, and parts thereof or units therein, and of the relevant scheme; and

(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 [provisions] requirements of this subsection if that share block company has, within a period of two years before such application, already complied with [the provisions of] section 11A of the Share Blocks Control Act, 1980 (Act No. 59 of 1980).

(3A) For the purposes of subsection (3) ‘lessee’ means a lessee who is a party to a lease entered into with the developer or any of his or her predecessors in title.”;

- (c) by the deletion of subsection (4);

- (d) by the substitution for subsections (5) and (5A) of the following subsections respectively:

“(5) **[The local authority shall grant the application]** An architect or a land surveyor acting on behalf of a developer shall inspect the property, and, if—

(a) **[the method and purpose of the proposed division into sections and common property are not contrary to the provisions of any operative town planning scheme at the date of the application for approval of the scheme;**

(b) in regard to any matter other than the proposed use, the building **[or buildings]** to which the scheme relates **[is or are not contrary to**

the provisions of] does not comply with any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law at the date of approval of the building plans;

[(c)](b) in regard to matters other than buildings, there is non-compliance with any applicable condition of any operative town planning scheme [is complied with], statutory plan or conditions subject to which a development was approved in terms of any law;

[(d)](c) the building [or buildings] to which the scheme relates, [was or were] has not been erected in accordance with any applicable building regulations or building by-laws in operation at the date of erection,

[Provided that in regard to paragraphs (b), (c) and (d)] apply to the local authority concerned for the condonation of such non-compliance and the local authority may [in its discretion disregard discrepancies and infringements and may also in respect of paragraph (d), accept an affidavit from an architect as necessary proof] condone such non-compliance by issuing a certificate to the applicant: Provided that no certificate shall be issued for condonation of non-compliance with a national building regulation regarding the strength and stability of any building unless a deviation has been permitted or an exemption has been granted in terms of section 18(2) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977).

(5A) If any **[application in terms of subsection (1)]** draft sectional plan relates to a building which is in the process of being erected, **[the local authority shall grant the application]** the developer shall cause the relevant documents to be submitted in terms of section 7 if such building—

- (i) is sufficiently completed for the measurements contemplated in section 6(1) to be undertaken; and
- (ii) whilst the erection thereof is not yet completed, complies with [the] any other applicable [requirements] scheme, by-laws or regulations referred to in subsection (5) and the proposed use of the property in question complies with any operative town planning scheme.”; and

(e) by the deletion of subsections (6), (7), (8), (9), (10) and (11).

Amendment of section 7 of Act 95 of 1986, as amended by section 4 of Act 63 of 1991

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

(a) by the substitution for subsection (1) of the following subsection:

“(1) **[After a local authority has approved a scheme,]** When a draft sectional plan is submitted in terms of section 4, the land surveyor or architect concerned shall on behalf of the developer submit to the Surveyor-General, for his or her approval, the prescribed number of copies of the draft sectional plan.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) The submission of the draft sectional plan to the Surveyor-General shall be accompanied by—

(a) a certificate [of the local authority signifying its approval of the scheme as reflected on the draft sectional plan] issued by an architect or a land surveyor stating that—

- (i) the proposed division into sections and common property is not contrary to—
 - (aa) any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law; or
 - (bb) any other current planning or development initiatives initiated by any authority with jurisdiction over the area, that may affect the development;

- (ii) in respect of matters other than the proposed use, the building to which the scheme relates 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;
- (iii) in respect of matters other than buildings, any applicable condition of any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law has been complied with;
- (iv) the building to which the scheme relates, was erected in accordance with approved building plans;
- (b) where applicable, a certificate issued by a local authority in terms of section 4(5);
- (c) where the application is signed by a person authorised to sign on behalf of the developer, a written authority by such developer authorising such person to sign the application on behalf of the developer;
- (d) in the case of an application in respect of a building referred to in section 4(5A), a certificate from the architect or the land surveyor concerned certifying that the building and the land comply with all the applicable requirements mentioned in this subsection;
- (e) if section 4(3) applies to the scheme—
- (i) an affidavit by the developer stating that that section has been complied with;
- (ii) a copy of the notice referred to in section 4(3)(a)(i) and the certificate referred to in section 4(3)(a)(ii); and
- (iii) where applicable, a certificate from a conveyancer in terms of the proviso to section 4(3);
- (f) if section 4(3) does not apply to the scheme, an affidavit by the developer to that effect.”;
- (c) by the insertion after subsection (2) of the following subsection:
- “(2A) The Surveyor-General shall not be responsible for investigating the correctness or accuracy of any document submitted to him or her in terms of subsection (2) or section 21, 24 or 25.”;
- (d) by the substitution for subsection (4) of the following subsection:
- “(4) A Surveyor-General shall not approve a draft sectional plan, unless [it] the applicable documents have been submitted to him or her in terms of subsection (2) and such plan has been prepared in accordance with [the provisions of the] this Act.”.

Amendment of section 8 of Act 95 of 1986, as amended by section 11 of Act 7 of 1992

4. Section 8 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of the following paragraph:
- “(a) signs, except as provided in such circumstances as may be prescribed, a draft sectional plan, a sectional plan or any other plan referred to in this Act, required in connection with the registration thereof, and in respect of which he or she has not carried out or **[personally]** supervised the measurements, and has not carefully examined and satisfied himself or herself of the correctness of the entries in any records and of the calculations in connection therewith which may have been made by any other person;”;
- (b) by the substitution for the words following paragraph (g) of the following words:
- “and in the case of land surveyors, the Director-General: **[Public Works and] Land Affairs** or in the case of architects, the Director-General: **Public Works**, or any other official authorized thereto by **[him]** the Director-General concerned, may refer a complaint in this regard to the relevant Council for investigation and the taking of such steps as the Council may deem fit.”.

Repeal of section 9 of Act 95 of 1986

5. Section 9 of the principal Act is hereby repealed.

Amendment of section 10 of Act 95 of 1986

6. Section 10 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 5

“(1) A developer shall **[notwithstanding that a sectional title register has been opened in respect of a building and land, and]** subject to subsection (5), not offer for sale or sell any unit in that building which is occupied by a lessee who was entitled to be notified in terms of section 4(3)(a)(i), to any person other than such lessee, unless the developer has, by letter delivered either personally or by registered post, offered the unit for sale to the lessee and the lessee has refused the offer within a period of 90 days or, in the case of a unit which is controlled premises referred to in the Rent Control Act, 1976 (Act No. 80 of 1976), and is subject to the provisions of that Act, within a period of 365 days, of the date of offer, or has, on the expiration of any such applicable period, not accepted the offer.”; and 10

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

“(5) (a) Any contract of purchase and sale concluded contrary to the provisions of subsection (1), (2) or (4) shall be void **[and the provisions of section 9(3) with regard to a contract referred to therein, shall apply *mutatis mutandis* in respect of any such void contract]**. 20

(b) A developer or any person who has performed partially or fully in terms of a contract which is void by virtue of this subsection shall have a claim against the other party to the extent of such performance. 25

(c) A developer may in addition claim from any such person—

(i) reasonable compensation for the use which the person may have had of the building and land in question or any part thereof; and
(ii) compensation for any damage caused to that building or land or any part thereof by the person, or any other person for whose acts or omissions such person is delictually liable; 30

(d) A person to whom an option has been granted or a purchaser may in addition claim from the developer—

(i) interest at the prescribed rate on any payment made in terms of the contract, from the date of payment to the date of recovery thereof; 35
(ii) reasonable compensation for any expenses incurred by him or her with or without the authority of the developer for the preservation of the building or land, or part thereof, or in respect of any improvements which enhance the market value thereof and which were effected by him or her with the express or implied consent of the developer; and 40
(iii) compensation for any damage or loss suffered by him or her which he or she would otherwise have been entitled to claim from the developer on the ground of breach of contract had the contract not been void and had the developer failed to effect any transfer in accordance with the contract.”. 45

Amendment of section 11 of Act 95 of 1986, as amended by section 5 of Act 63 of 1991 and section 3 of Act 7 of 1992

7. Section 11 of the principal Act is hereby amended—

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

“(b) a schedule certified by a conveyancer setting out the servitudes and conditions of title burdening or benefiting the land and the other registrable conditions imposed **[by the local authority or the Administrator when approving the scheme, or]** by the developer in terms of subsection (2), as well as such other particulars as may be prescribed;” 50

(b) by the addition in subsection (3) to paragraph (d) of the following proviso: 55

“Provided that section 40(5) of the Deeds Registries Act shall apply with the necessary changes to any bond which is registered against one or more pieces of land shown on the sectional plan;” and

(c) by the deletion in subsection (3) of paragraph (fA).

Amendment of section 13 of Act 95 of 1986, as amended by section 7 of Act 63 of 1991 5

8. Section 13 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A sectional plan, together with the schedule of servitudes and conditions referred to in section 11(3)(b), shall upon the registration of such plan be deemed to be part of the sectional title deed, and an owner’s title to his or her section and his or her undivided share in the common property shall be subject to or shall be benefited by the servitudes, other real rights or conditions (if any) which burden or benefit the land shown on the sectional plan, and shall also be subject to any registrable condition imposed [by the local authority or the Administrator when approving the scheme, or] by a developer in terms of section 11(2).” 10 15

Amendment of section 15A of Act 95 of 1986

9. Section 15A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A conveyancer or any other person who is authorised thereto by or under any law, who prepares a deed or other document for the purposes of registration or filing in a deeds registry, and who signs a prescribed certificate on such deed or document, accepts by virtue of such signing the responsibility, to the extent prescribed by regulation for the purposes of this section, for the accuracy of the facts mentioned in such deed or document or which are relevant in connection with the registration or filing thereof, and which are prescribed by regulation.”; 20 25

and

(b) by the deletion of subsection (2).

Amendment of section 15B of Act 95 of 1986 30

10. Section 15B of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs respectively—

“(a) a conveyancer’s certificate confirming that as at date of registration— 35

(i) (aa) [that] if a body corporate is deemed to be established in terms of section 36(1), that body corporate has certified that all moneys due to the body corporate by the transferor in respect of the said unit have been paid, or that provision has been made to the satisfaction of the body corporate for the payment thereof; or 40

(bb) [that,] if a body corporate is not deemed to be established, no moneys are payable;

(ii) [that] no real right of extension of a scheme as contemplated in section 25 is registered in favour of a developer or the body corporate or, if such right is so registered, that it is disclosed in the deed of alienation to the transferee as contemplated in section 25(14) or, if it is not so disclosed, that the transferee after the conclusion of the deed of alienation has in writing exercised his or her option in terms of section 25(15) and that he or she has elected not to annul the alienation on the ground of the said defect; 45 50

(b) a clearance certificate from the local authority that all rates and moneys due to such local authority in terms of any law in respect of the land and buildings of the scheme have been paid if— 55

- (i) provision is made by law for the separate rating of units; or
 - (ii) the transfer will result in the establishment of a body corporate in terms of section 36;” and
- (b) by the deletion of subsection (6).

Amendment of section 17 of Act 95 of 1986, as amended by section 11 of Act 63 of 1991 5

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

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The owners and holders of a right of extension contemplated in section 25 may by unanimous resolution direct the body corporate on their behalf to alienate common property or any part thereof, or to let common property or any part thereof under a lease, and thereupon the body corporate shall, notwithstanding any provision of section 20 of the Deeds Registries Act, but subject to compliance with **[the provisions of]** any **[relevant]** law relating to the subdivision of land or to the letting of a part of land, as the case may be, have power to deal with such common property or such part thereof in accordance with the direction, and to execute any deed required for the purpose: Provided that if the whole of the right referred to in section 25 or section 60(1)(b) is affected by the alienation of common property, such right shall be cancelled by the registrar with the consent of the holder thereof on submission of the title to the right.”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) The registrar shall—
- (a) **[if the holders of bonds over units in the scheme consent in writing thereto,]** register the transfer of land comprised in the common property, and thereupon the land shall revert to the land register and the registrar shall make an appropriate endorsement and entry on such title deed and in his or her records to give effect thereto: Provided that if a portion only of the land comprised in the common property and on which no section or part of a section is erected, is so transferred, no endorsement thereof shall be made on the sectional title deeds of the owners of units: Provided further that in such a case where a portion only of the land comprised in the common property is transferred, a diagram of such portion approved by the Surveyor-General in terms of the Land Survey Act, 1927 (Act No. 9 of 1927), shall be annexed to the said title deed;
- (b) notify the Surveyor-General and local authority of any reversion of any land to the land register under **[the provisions of]** paragraph (a), and upon receipt of such notification the Surveyor-General shall make an appropriate endorsement on the original sectional plan and the deeds registry copy thereof; and
- (c) **[if the holders of bonds over units in the scheme consent in writing thereto,]** register a notarial lease of land comprising common property by making an appropriate endorsement against the schedule of conditions referred to in section 11(3)(b), and no endorsement thereof shall be made on the sectional title deeds of the units: Provided that where a lease is registered over a portion only of the land comprised in the common property, a diagram of such portion approved in terms of the Land Survey Act, 1927 (Act No. 9 of 1927), shall be annexed to the deed of lease.”.
- (c) by the substitution for subsection (4) of the following subsection:
- “(4) (a) Where, pursuant to **[the provisions of]** subsection (1), it is

sought to alienate **[or to let]** a portion of the common property on which a section **[or part of a section]** is erected, the registrar shall not register the transfer **[or lease]** unless the registration of the section in question has been cancelled with the written consent of the owner.

(b) Where pursuant to subsection (1) it is sought to let land which forms part of the common property or a portion thereof on which a section or part of a section is erected, the registrar shall not register the lease, unless it is made subject to any right which the owner of the section or part of the section may have. 5

~~[(b)]~~ (c) When the registration of a section is cancelled under paragraph (a), the quota of the section shall lapse and the quotas of the remaining sections shall be proportionately adjusted. 10

~~[(c)]~~ (d) The registrar shall notify the Surveyor-General and the local authority whenever the registration of a section has been cancelled under paragraph (a), and upon receipt of such notification the Surveyor-General shall effect the necessary amendments to the original sectional plan, the deeds registry copy of the sectional plan and the schedule thereto specifying the quota of each section.”; 15

(d) by the insertion after subsection (4) of the following subsections:

“(4A) (a) Where part of a section is erected on a portion of the common property the unaffected part or parts of the section in the scheme shall be substituted in accordance with an amended participation quota schedule, which shall be referred to the Surveyor-General for approval. 20

(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 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. 25 30

(c) The registrar shall notify the Surveyor-General and the local authority whenever an endorsement has been made in terms of paragraph (b), and on receipt of such notice the Surveyor-General shall make the necessary amendments on the original sectional plan, the deeds registry copy of the sectional plan and the schedule thereto specifying the quota of each section. 35

(4B) (a) Where in terms of subsection (1) it is sought to alienate a portion of land on which an exclusive use area or part thereof is registered, the registrar shall not register the transfer, unless the registration of the exclusive use area or part thereof has been cancelled with the written consent of the holder. 40

(b) The registrar shall notify the Surveyor-General and the local authority when the registration of an exclusive use area or part thereof has been cancelled in terms of paragraph (a), and on receipt of such a notice the Surveyor-General shall make the necessary amendments on the original sectional plan and on the deeds registry copy of the sectional plan.”; and 45

(e) by the substitution for subsection (5) of the following subsection: 50

“(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 **[the common property]** 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 shall be surrendered to the registrar for cancellation, and the title deed of any other registered real right in the land, excluding mineral rights, shall be surrendered to the registrar for endorsement and the registrar shall 55

close the sectional title register and notify the Surveyor-General and the local authority that the sectional title register has been closed.”.

Amendment of section 19 of Act 95 of 1986

12. Section 19 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: 5

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

Repeal of section 20 of Act 95 of 1986

13. Section 20 of the principal Act is hereby repealed. 10

Amendment of section 21 of Act 95 of 1986

14. Section 21 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) If an owner of a section proposes to subdivide his or her section or to consolidate two or more sections registered in his or her name, he or she shall with the consent of the trustees of the body corporate, which consent shall not unreasonably be withheld, cause the land surveyor or architect concerned to submit the draft sectional plan of subdivision or consolidation, as the case may be, to the Surveyor-General for approval.”; and 15

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 20

“(a) the documents referred to in section 7(2), suitably adjusted;”.

Amendment of section 22 of Act 95 of 1986, as amended by section 12 of Act 63 of 1991

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15. Section 22 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) two copies of the sectional plan of subdivision [**together with a schedule, certified by a conveyancer, of any registrable conditions imposed by the local authority or Administrator when approving the subdivision**];” 30

Amendment of section 23 of Act 95 of 1986, as amended by section 13 of Act 63 of 1991

16. Section 23 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) two copies of the sectional plan of consolidation [**together with a schedule certified by a conveyancer of any registrable conditions imposed by the local authority or the Administrator when approving the consolidation**];” 35

Amendment of section 24 of Act 95 of 1986, as amended by section 14 of Act 63 of 1991 and section 5 of Act 7 of 1992

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17. Section 24 of the principal Act is hereby amended—

(a) by the deletion of subsections (1) and (2);

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

“(3) If an owner of a section proposes to extend the limits of his or her section, he or she shall with the approval of the body corporate, authorized by a special resolution of its members, cause the land surveyor or architect concerned to submit a draft sectional plan of the extension to the Surveyor-General for approval.”; 45

(c) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 50

“(a) the documents referred to in section 7(2), suitably adjusted;” and

(d) 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 **[the consent of the mortgagee of each section in the scheme]** a certificate by a conveyancer stating that there is not a deviation of more than five per cent in the participation quota of a section or sections as a result of the extension, or if there is a deviation of more than five 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 and section 6 of Act 7 of 1992

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

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

“(b) may be transferred by the registration of a notarial deed of cession in respect of the whole, a portion or a share in such right: Provided that in the case of a cession affecting only a portion of the land comprising the scheme only such portion shall be identified to the satisfaction of the Surveyor-General.”;

(b) by the substitution for subsection (6) of the following subsection:

“(6) If no reservation was made by a developer in terms of subsection (1), or if such a reservation was made and for any reason has lapsed, the right to extend a scheme including land contemplated in section 26, shall vest in the body corporate which shall be entitled, subject to **[the provisions of]** this section and after compliance **[mutatis mutandis]**, with the necessary changes, with the requirements of paragraphs (a), (b), (c), (d) and (g) of subsection (2), to obtain a certificate of real right in the prescribed form in respect thereof: Provided that the body corporate shall only exercise or alienate or transfer such right with the written consent of all the members of the body corporate as well as with the written consent of the mortgagee of each unit in the scheme: Provided further that a member or mortgagee shall not withhold such approval without good cause in law.”;

(c) by the insertion after subsection (6) of the following subsections:

“(6A) If no reservation has been made by a developer in terms of subsection (1) and the body corporate has not yet been established, the registrar may issue a certificate of real right of extension as contemplated in section 12(1)(e) on application by the developer accompanied by the sectional mortgage bond and the written consent of any bondholder and such of the documents contemplated in subsection (2) as are applicable.

(6B) Upon compliance with subsection (6A) 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 of real right shall be issued subject to any sectional mortgage bond against the land.”;

(d) by the deletion of subsection (7); and

(e) by the deletion in subsection (10) of paragraph (b).

Amendment of section 26 of Act 95 of 1986, as amended by section 16 of Act 63 of 1991

19. Section 26 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A body corporate, authorized thereto in writing by all of its members, may purchase land to extend the common property **[for the purpose of providing amenities and facilities to its members]**.”;

(b) by the deletion of subsection (3); and

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

“(4) The provisions of section 7(2)**[(a)]**, (3) and (4) shall apply

[mutatis mutandis] with the necessary changes to the preparation and submission to the Surveyor-General of a draft plan of extension of the common property, and the approval of such plan by him or her.”.

Amendment of section 27 of Act 95 of 1986, as amended by section 17 of Act 63 of 1991

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20. Section 27 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsections:

“(1A) Notwithstanding section 27(1)(a), if no reservation was made by a developer in terms of subsection (1) and the body corporate has not yet been established, the registrar may issue a certificate of real right in respect of a right of exclusive use as contemplated in section 12(1)(f) on application by the developer accompanied by the sectional mortgage bond and the written consent of any bondholder.

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(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 of real right shall be issued subject to any sectional mortgage bond against the land.”.

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Insertion of section 27A in Act 95 of 1986

21. The following section is hereby inserted in the principal Act after section 27:

“Rules regarding exclusive use areas

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27A. A developer or a body corporate may make rules which confer rights of exclusive use and enjoyment of parts of the common property upon members of the body corporate: Provided that such rules shall—

- (a) not create rights contemplated in section 27(6);
- (b) include a layout plan to scale on which is clearly indicated—
 - (i) the locality of the distinctively numbered exclusive use and enjoyment parts; and
 - (ii) the purposes for which such parts may be used;
- (c) include a schedule indicating to which member each such part is allocated.”.

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Amendment of section 34 of Act 95 of 1986, as amended by section 18 of Act 63 of 1991 and section 7 of Act 7 of 1992

22. Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) When a developer has in one transaction alienated the whole of his or her interest in the land and the building or buildings comprised in a scheme, or a share in the whole of such interest, to any other person, the registrar shall register the transaction by means of a deed of transfer in the case of units and by means of a bilateral notarial deed of cession in the case of rights reserved under sections 25 and 27.”.

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Amendment of section 35 of Act 95 of 1986, as amended by section 19 of Act 63 of 1991 and section 8 of Act 7 of 1992

23. Section 35 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) (a) If the rules contemplated in subsection (2) are substituted, added to, amended or repealed, the body corporate shall lodge with the registrar a notification in the prescribed form of such substitution, addition, amendment or repeal **[of the rules concerned and no such substitution, addition, amendment or repeal shall be of force and effect until noted by the registrar against the certificate referred to in section 11(3)(e)].**

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(b) The registrar shall not be involved in the enforcement or application of the rules contemplated in subsection (2) and is not required to examine or note any substitution, addition, amendment or repeal thereof against any certificate or other document.

(c) A substitution, addition, amendment or repeal contemplated in paragraph *(a)* shall come into operation on the date of filing of the notification referred to in that paragraph.”.

Amendment of section 38 of Act 95 of 1986

24. Section 38 of the principal Act is hereby amended by the substitution for paragraph (i) of the following paragraph:

“(i) to enter into an agreement with any owner or occupier of a section for the provision of amenities or services by **[it]** the body corporate to such section or to the owner or occupier thereof, including the right to let a portion of the common property to any such owner or occupier by means of a lease other than a lease contemplated in section 17(1); and”.

Repeal of section 52 of Act 95 of 1986

25. Section 52 of the principal Act is hereby repealed.

Amendment of section 54 of Act 95 of 1986, as amended by section 22 of Act 63 of 1991

26. Section 54 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for subparagraph (iv) of paragraph *(c)* of the following subparagraph:

“(iv) an officer in the employ of **[a local authority in the Republic of South Africa nominated by the United Municipal Executive of South Africa]** the Council of South African Banks;”;

(b) by the substitution in subsection (2) for subparagraph (vi) of paragraph *(c)* of the following subparagraph:

“(vi) an official of the Department of **[Public Works and]** Land Affairs.”; and

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

“(5) When any nomination in terms of subsection (2)(c)(i), (ii), (iii) or (iv) becomes necessary, the body concerned shall at the request of the Director-General: **[Public Works and]** Land Affairs furnish the nomination required for appointment to the regulation board, within a period of 60 days from the date of such request, failing which the Minister may appoint, subject to the provisions of that subsection, any suitable person as a member in place of the person he or she would have appointed if the said body had not so failed to nominate a person.”.

Amendment of section 55 of Act 95 of 1986, as amended by section 23 of Act 63 of 1991, section 10 of Act 7 of 1992, section 3 of Act 15 of 1993 and section 17 of Act 170 of 1993

27. Section 55 of the principal Act is hereby amended by the deletion of paragraph *(j)*.

Amendment of section 60 of Act 95 of 1986, as amended by section 25 of Act 63 of 1991 and section 4 of Act 15 of 1993

28. Section 60 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding the repeal of the Sectional Titles Act, 1971 (Act No. 66 of 1971), by section 59 of this Act—

(a) the registration of a sectional plan and the opening of a sectional title register in respect of a development scheme which had, prior to the date of coming into operation of this Act (in this section referred

- to as the commencement date), already been approved by a local authority in terms of the Sectional Titles Act, 1971, shall be completed or exercised in terms of the Sectional Titles Act, 1971, as if it had not been repealed: Provided that such sectional plans and the opening of the sectional title register shall be registered in a deeds registry within 24 months after commencement of the Sectional Titles Amendment Act, 1997, or such extended period as may be prescribed by regulation, failing which the approval shall lapse. 5
- (b) (i) a certificate of real right contemplated in section 25 shall be issued on application by the developer in respect of a right of extension of a building acquired in terms of section 18 of the Sectional Titles Act, 1971, and upon compliance with section 25 of this Act, this Act shall be applicable as if the reservation had been made in terms of this Act: Provided that a certificate of real right in terms of section 18 of the Sectional Titles Act, 1971, shall only be issued if the right of extension still vests in the developer; 10
- (ii) the registrar shall not issue a certificate of real right as contemplated in subparagraph (i) unless a certificate is provided by a conveyancer stating that the consent of all owners of units in the scheme and of all the mortgagees to the proposed extension has been obtained, which consent shall not unreasonably be withheld; 20
- (iii) the developer shall obtain a certificate contemplated in subparagraph (i) within a period of 24 months after the commencement of the Sectional Titles Amendment Act, 1997, or such extended period as may be prescribed by regulation, failing which this right shall lapse.”; and 25
- (b) by the substitution for subsection (3) of the following subsection: 30
- “(3) Where an owner has, prior to the commencement of this Act, acquired in terms of an agreement or been granted in terms of rules made under the Sectional Titles Act, 1971, the right to the exclusive use of a part or parts of common property, the body corporate concerned shall, if so requested after the commencement date by the owner, **[and if any mortgagee of the owner’s section consents in writing thereto,]** transfer such right to the owner by the registration of a notarial deed entered into by the parties, in which the body corporate shall represent the owners of all relevant sections as transferor.”. 35

Substitution of the word “Administrator” in Act 95 of 1986 40

29. The principal Act is hereby amended by the substitution for the word “Administrator”, wherever it occurs except in section 46, of the word “Premier”.

Substitution of the expression “operative town planning scheme” in Act 95 of 1986

30. The principal Act is hereby amended by the substitution for the expression “operative town planning scheme”, wherever it occurs, of the expression “operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law. 45

Short title

31. This Act shall be called the Sectional Titles Amendment Act, 1997.

**MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES
AMENDMENT BILL**

It has become necessary to amend the Sectional Titles Act, 1986 (Act No. 95 of 1986), in order to bring it into line with changes to other legislation and the Bill thus seeks to amend, delete or insert certain definitions.

In order to eliminate red tape and save costs in the establishment of sectional title schemes the Bill seeks to reduce the role of local authorities in that process to a minimum.

The Bill also contains certain consequential amendments.

In preparing the Bill the various Registrars of Deeds and Surveyors-General were consulted and other interested parties were asked for their comments.

The Department and the State Law Advisers are of the view that the procedure set out in section 76 of the Constitution should be followed with regard to this Bill.