

**NOTICE 1993 OF 2003****DEPARTMENT OF LAND AFFAIRS****NOTICE OF INTENTION TO INTRODUCE THE SECTIONAL TITLES AMENDMENT BILL, 2003 INTO PARLIAMENT**

The Minister for Agriculture and Land Affairs intends to introduce the Sectional Titles Amendment Bill, 2003 in the National Assembly in 2003. The Bill as it is to be introduced together with a Memorandum on the Objects of the Bill, are hereby published in terms of Rule 241(1) of the Rules of the National Assembly.

Interested persons and institutions are invited to submit written representations on the Bill within 21 (twenty one) days from the date of this publication to :

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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.

**BILL**

To make provision for the amendment of the Sectional Titles Act so as to amend certain definitions; to repeal redundant provisions; to provide for certain acts of registration; 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 and section 1 of Act 44 of 1997*

1. Section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986)(hereinafter referred to as the principal Act), is hereby amended :

(a) By the substitution for the words preceding sub-paragraph (i) of paragraph (b) of the definition of 'owner' of the following words:

“(b) immovable property [ , ] and real rights in immovable property [and notarial bonds] - ”; and

(b) by the insertion after subsection (3) of the following subsection :

“(3A) If a body corporate is unable to obtain a unanimous resolution, it may, subject to the provisions of subsection (3)(c), approach the court for relief.”.

***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 and section 2 of Act 44 of 1997***

2. Section 4 of the principal Act is hereby amended by the deletion of subsection (5A).

***Amendment of section 7 of Act 95 of 1986, as amended by section 4 of Act 63 of 1991 and section 3 of Act 44 of 1997***

3. Section 7 of the principal Act is hereby amended by the deletion of paragraphs (a)(i)(bb), (a)(ii), (a)(iii), (a)(iv), (c) and (d) of subsection (2).

***Amendment of section 17 of Act 95 of 1986, as amended by section 11 of Act 63 of 1991 and section 11 of Act 44 of 1997***

4. The principal Act is hereby amended by the substitution for the heading of section 17 of the following heading:

**“Alienation and letting of common property”**

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

5. Section 24 of the principal Act is hereby amended :

- (a) By the substitution for subsection (3) of the following subsection:

“(3) If an owner of a section proposes to extend the **[limits]** boundaries or floor area 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.”; and

- (b) by the deletion of paragraph (b) of subsection (6).

***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 and section 18 of Act 44 of 1997***

6. Section 25 of the principal Act is hereby amended :

- (a) By the substitution for the heading of the following heading:

**“Extension of schemes by addition of sections and exclusive use areas”;**

- (b) by the insertion of the following paragraph after paragraph (e) of subsection (10) :

**“(eA) any mortgage bond to which the right may be subject, together with the consent of the mortgagee to the registration of the extension of the scheme and the endorsement of such bond to the effect that it attaches to-**

- (i) each section shown on the sectional plan and its undivided share in the common property;
- (ii) the certificate of real right in respect of a right of exclusive use as contemplated by section 27(1); and
- (iii) if applicable, the certificate of real right in respect of the remainder of the right reserved in terms of section 25(1); and;
- (c) by the substitution for paragraph (c) of subsection (11) 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, 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”;
- (d) by the substitution for paragraph (b) of subsection (15) of the following paragraph:
- “(b) After notice by any such purchaser to the seller that he or she annuls the alienation, the alienation shall be void, and

thereupon the provisions of section **[9(3)]** 10(5) shall apply *[mutatis mutandis]* with the necessary alterations.”.

***Amendment of section 26 of Act 95 of 1986, as amended by section 16 of Act 63 of 1991 and section 19 of Act 44 of 1997***

7. Section 26 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The registrar shall, upon the submission of the prescribed documents, register a plan of extension of the common property in terms of this section by making an endorsement on the relevant title deed to reflect that the land concerned has been incorporated in the sectional plan, shall make such further endorsements and entries in his or her records as may be necessary to give effect thereto, and shall furnish a copy of the sectional plan of extension to the local authority concerned 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 deeds office copy of the sectional plan to reflect such extension.”.

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

8. Section 27 of the principal Act is hereby amended :

(a) By the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) If a part or parts of common property is or are delineated on a sectional plan in terms of section 5(3)(f), the developer **[shall]** may, for a specific purpose when making application for the

opening of a sectional title register and the registration of the sectional plan, impose a condition in terms of section 11(2) in the schedule referred to in section 11(3)(b), by which the right to the exclusive use of such part or parts of the common property delineated for this purpose on the sectional plan, is conferred upon the owner or owners of one or more of the sections **[and the registrar shall not accept for registration a sectional plan on which a part or parts of the common property is so delineated, unless the developer imposes any such condition conferring any such right for a specific purpose on the owner or owners of a section or sections].**”;

- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) A developer shall cede the right to the exclusive use of part or parts of the common property to the owner or owners **[to whom such rights are allocated]** of units in the scheme, by the registration of a unilateral notarial deed in their favour **[:Provided that when the developer has transferred the last section in a scheme, he shall cede to the body corporate the right to any exclusive use area still registered in his name free of charge and without any compensation].**”;

- (c) by the insertion of the following paragraphs after paragraph (b) of subsection (1):

“(c) If a developer ceases to be a member of the body corporate as contemplated in section 36(2), any right to an exclusive use

area still registered in his or her name, shall vest in the body corporate free from any mortgage bond.

- (d) If a right to the exclusive use of a part or parts of the common property vests in a body corporate in terms of paragraph (c), the body corporate must, in the prescribed form, apply to the registrar for the issuing of a certificate of real right of exclusive use in its favour, and must submit a certificate to the effect that the provisions of any law in connection with the vesting, have been complied with, whereupon the registrar must issue such certificate in the prescribed form.”;

- (d) by the substitution for subsection (4) of the following subsection:

- “(4) (a) An owner of a section in whose favour the right to the exclusive use of a part of the common property delineated on the sectional plan is registered, may transfer his or her interest in such right to the owner of another section in the scheme by the registration by the registrar of a notarial deed of cession entered into by the parties.
- (b) If an owner ceases to be a member of the body corporate as contemplated in section 36(2), any right to an exclusive use area still registered in his or her name shall vest in the body corporate free from any mortgage bond.
- (c) If a right to the exclusive use of a part or parts of the common property vests in a body corporate in terms of paragraph (b), the body corporate must, in the prescribed

form, apply to the registrar for the issuing of a certificate of real right of exclusive use in its favour, and must submit a certificate to the effect that the provisions of any law in connection with the vesting have been complied with, whereupon the registrar must issue such certificate in the prescribed form.”; and

- (e) by the insertion of the following subsection after subsection (6) :

“(7) Any person who holds two or more rights to exclusive use areas, or undivided shares therein, by one title deed may, subject to the provisions prescribed, obtain a separate title deed in respect of one or more of the rights to exclusive use areas held therein: Provided that at least one of the exclusive use areas or share therein held by such deed, remains held thereby.”.

***Amendment of section 37 of Act 95 of 1986***

9. Section 37 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection :

“(2) Any contributions levied under any provision of subsection (1), shall be due and payable on the passing of a resolution to that effect by the trustees of the body corporate, and may be recovered by the body corporate by action in any court (including any magistrate’s court) of competent jurisdiction from the persons who were owners of units at the time **[when such contributions became due]** such resolution was passed.”.

**Short title**

10. This Act shall be called the Sectional Titles Amendment Act, 2003.

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## **MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES AMENDMENT BILL, 2003**

### **1. PURPOSE**

- 1.1 The Sectional Titles Amendment Bill, 2003 (hereinafter referred to as “the Bill”), proposes amendments to the Sectional Titles Act, 1986 (Act No. 95 of 1986) (hereinafter referred to as “the Act”), which aim to amend certain definitions, to repeal redundant provisions, to provide for the substitution of certain headings, to provide for certain acts of registration, and to provide for matters connected therewith.
- 1.2 Most of the proposed amendments are aimed at streamlining the application of the Act, expediting the process of developing sectional title schemes and at cost effectiveness for public benefit.

### **2. THE BILL**

- 2.1 Clause 1 provides for the amendment of certain definitions for clarity purposes and to provide for recourse to the justice system in appropriate cases.
- 2.2 Clause 2 provides for the repeal of a redundant section.
- 2.3 Clause 3 provides for the deletion of certain redundant provisions.
- 2.4 Clause 4 provides for the substitution of a heading that is incongruous with the provisions of the relevant section.

- 2.5 Clause 5 provides for the elimination of interpretation problems, the alignment of the relevant provision with the Afrikaans text of the Act, and the repealing of redundant provisions.
- 2.6 Clause 6 provides for the substitution of a heading that is incongruous with the provisions of the relevant section, the alignment of the relevant section with another related section, the omission of reference to a repealed section, the promotion of gender equality, the substitution of a Latin phrase with its English counterpart, and other consequential amendments.
- 2.7 Clause 7 provides for technical amendments that are aimed at providing a mechanism of incorporating new conditions into a section 11(3)(b) schedule.
- 2.8 Clause 8 provides for the disposal of an exclusive use area which remains registered in the name of a person who has ceased to be a member of the body corporate, the promotion of gender equality, other technical amendments as well as consequential amendments.
- 2.9 Clause 9 provides for technical amendments that are aimed at securing clarity.
- 2.10 Clause 10 provides for the short title.

### **3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

None.

### **4. FINANCIAL IMPLICATIONS**

None.

**5. COMMUNICATION IMPLICATIONS**

To be undertaken by the Department of Land Affairs.

**6. CONSTITUTIONAL IMPLICATIONS**

There are no known constitutional implications.

**7. OTHER DEPARTMENTS/BODIES/PERSONS CONSULTED**

The Law Society of South Africa

The South African Council for Architects

The South African Council for Professional and Technical Surveyors

The South African Property Owners Association

The Banking Council of South Africa

**8. PARLIAMENTARY PROCEDURE**

The State Law Advisors and the Department of Land Affairs are of the view that the Bill must be dealt with in accordance with the procedures 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.