

---

**GENERAL NOTICES  
ALGEMENE KENNISGEWINGS**

---

**NOTICE 708 OF 2005  
DEPARTMENT OF LAND AFFAIRS**

The Sectional Titles Amendment Bill is hereby published for general comment. Comment must be submitted in writing within 30 days of the date of publication of this notice to :

**Mr N S Lefafa  
Chief Registrar of Deeds  
Private Bag X833  
PRETORIA  
0001**

Fax : (012) 328 3347  
e-mail : [slefafa@dla.gov.za](mailto:slefafa@dla.gov.za)



**N S LEFAFA**

**CHIEF REGISTRAR OF DEEDS**

TH3062

# REPUBLIC OF SOUTH AFRICA

## SECTIONAL TITLES AMENDMENT BILL, 2005

-----  
*(As introduced in the National Assembly as a section 75 Bill; Bill published in Government Gazette No. 27579 of 20 May 2005) (The English text is the official text of the Bill)*  
-----

**(MINISTER FOR AGRICULTURE  
AND LAND AFFAIRS)**

**[B - 2005]**

**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 amend the Sectional Titles Act, 1986, so as to amend certain definitions; to provide for the registration of a sectional mortgage bond over an exclusive use area; to provide that joint holders of certain rights may apply for a certificate of real rights in respect of their undivided shares in an exclusive use area or a right **contemplated** in section 25(1) of the Act; to regulate the registration of transfer, cession or hypothecation of undivided shares in an exclusive use area or a right contemplated in section 25(1); to extend the manner in which a body corporate may acquire land for the extension of common property and to regulate the registration of land so acquired; to provide for the deletion of a proviso; to provide for the levying of special contributions by the trustees of a body corporate and the liability for payment of contributions levied; to provide for the substitution of the reference to the repealed Land Survey Act, 1927; and to provide for matters connected therewith.

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

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

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

- (a) by the substitution in subsection (1) for the definition of “Chief Surveyor-General” of the following definition :

“ ‘**Chief Surveyor-General**’ means the Chief Surveyor-General appointed in terms of section **[1] 2** of the Land Survey Act, **[1927 (Act 9 of 1927)] 1997 (Act 8 of 1997);**”;

- (b) by the substitution in subsection (1) for paragraph (b) of the definition of “sectional mortgage bond” of the following paragraph :

“(b) a registered lease or sub-lease of any such unit or undivided share in a unit or land **[; or] which –**

(i) was entered into for a period of not less than ten years;

(ii) was entered into for the natural life of the lessee or any other person mentioned in the lease; or

(iii) 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; or”;

and

- (c) by the substitution in subsection (1) for the definition of "Surveyor-General" of the following definition :

" 'Surveyor-General' means a Surveyor-General appointed in terms of section [4] 5 of the Land Survey Act, [1927 (Act 9 of 1927)] 1997 (Act 8 of 1997);".

**Amendment of section 15B of Act 95 of 1986, as inserted by section 10 of Act 63 of 1991 and amended by section 10 of Act 44 of 1997**

2. Section 15B of the principal Act is hereby amended –

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph :

“(c) the registrar shall register any sectional mortgage bond by which a unit or an undivided share in a unit or an exclusive use area or land held under a sectional title deed, or a registered lease or sub-lease of a unit or an undivided share in a unit or such land, or any registered real right in or over any such unit or undivided share in a unit or land, is hypothecated, and any cession, cancellation or modification of such bond, by means of an endorsement made by him or her on the sectional title deed or on the registered lease or sub-lease or bond or other deed; and”;

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

“(5) Any person who is the joint owner of a unit or the joint holder of a right to an exclusive use area or the joint holder of a right referred to in

section 25(1), held by such person and one or more other persons under one sectional title deed or a certificate of real right or a notarial deed of cession may, upon application to the registrar in the prescribed manner, obtain a certificate of registered sectional title or a certificate of real right in the prescribed form in respect of his or her undivided share in such unit or right to an exclusive use area or a right referred to in section 25(1), and no transfer or cession of a fraction only of his or her undivided share in such unit or exclusive use area and no hypothecation or lease of the whole or any fraction of his or her undivided share in such unit or right to an exclusive use area or a right referred to in section 25(1), shall be registered in a deeds registry, unless a certificate of registered sectional title or a certificate of real right [in the prescribed form] in respect of such undivided share is produced to the registrar.”.

**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**

3. 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 or otherwise acquire land to extend the common property and such land must be registered in the name of the body corporate.”;  
and

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

“(2) Land purchased or otherwise acquired and registered in the name of [by] a body corporate in terms of subsection (1) shall be deemed to be owned by the owners of the sections in the building concerned in the same

proportion as their participation quota as reflected on the relevant sectional plan.”.

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

4. Section 36 of the principal Act is hereby amended by the deletion of the proviso to subsection (2).

**Amendment of section 37 of Act 95 of 1986, as amended by section 9 of Act 29 of 2003**

5. Section 37 of the principal Act is hereby amended –

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

“(2) **[Any] Liability** for contributions levied under any provision of subsection (1), save for special contributions contemplated in subsection (2A), shall **[be due and payable on] accrue from** 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 resolution was passed : Provided that upon the change of ownership of a unit, the successor in title becomes liable for the *pro rata* payment of such contributions from the date of change of such ownership.”; and

(b) by the insertion of the following subsections after subsection (2) :

“(2A) A special contribution shall be due on the passing of a resolution by the trustees of the body corporate levying such contribution 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 resolution was passed.

(2B) "Special contribution" for the purposes of this section, means any contribution levied under subsection (1) other than contributions which arise from the approval of the estimate of income and expenditure at any annual general meeting of a body corporate, determined as contributions to be levied upon the owners during the ensuing financial year."

### **General amendment**

6. The principal Act is hereby amended by the substitution for the expression "Land Survey Act, 1927 (Act 9 of 1927)", wherever it occurs, of the expression "Land Survey Act, 1997 (Act 8 of 1997)".

### **Short title**

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



## MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES AMENDMENT BILL, 2005

### 1. PURPOSE

The Sectional Titles Amendment Bill, 2005 (hereinafter referred to as "the Bill"), proposes certain amendments to the Sectional Titles Act, 1986 (Act No. 95 of 1986) (hereinafter referred to as "the Act").

### 2. OBJECTS OF THE BILL

2.1 Clause 1 of the Bill proposes certain consequential amendments to the definitions of "Chief Surveyor-General" and "Surveyor-General" as a result of the repeal of the Land Survey Act, 1927 (Act No. 9 of 1927). It also seeks to amend the definition of "sectional mortgage bond" to align the periods for registered and unregistered leases or sub-leases.

2.2.1 Section 15B(1)(c) empowers a registrar of deeds to register a sectional mortgage bond by which a unit, undivided share in a unit, land held under a sectional title deed, registered lease or sub-lease, undivided share in a unit or land, registered real right or undivided share in a unit or land, is hypothecated when a sectional title register has been opened and the sectional plan has been registered. Clause 2(a) of the Bill proposes that this power also be extended to exclusive use areas.

2.2.2 Section 15B(5) of the Act grants the joint owner of a unit the right to apply to the registrar of deeds for a *certificate* of registered sectional title in respect of such owner's undivided share in the unit. Clause 2(b) of the Bill proposes that this right also be extended to the joint holder of a right to an exclusive use area or a right referred to in section 25(1) of the Act. It is

also proposed that joint owners may either apply for a registered sectional title or a certificate of real right.

2.3.1 Section 26(1) of the Act empowers the body corporate to purchase land to extend the common property. Clause 3(a) of the Bill seeks to empower the body corporate to also acquire land otherwise, for example, by donation, exchange or bequest. The land acquired in terms of subsection (1) must be registered in the name of the body corporate.

2.3.2 The proposal in clause 3(b) of the Bill for the amendment of section 26(2) of the Act, is a consequential amendment pursuant to the amendment of section 26(1) of the Act.

2.4 Section 36(2) of the Act disqualifies a developer or the owner of a unit in a scheme to be a member of a body corporate, if the developer ceases to have a share in the common property and the owner ceases to be the owner of a unit. The proviso contradicts the preceding provisions and also creates legal uncertainty pertaining to membership of the body corporate. It is, therefore, proposed that the proviso be deleted.

2.5.1 Section 37 of the Act provides for the levying of contributions. In terms of section 37(2) levies accrue from the passing of a resolution by the trustees of the body corporate and *the* persons who were owners of units at the time the resolution was passed, are liable for the payment thereof. The addition of the proviso to this subsection as proposed in clause 5(a) of the Bill, seeks to give clarity on the question pertaining to the payment of levies in cases where ownership changes.

2.5.2 Section 37 of the Act does not specifically provide for the levying of

**special** contributions. Over the years the levying of special contributions for specific special purposes has become a general phenomenon. The proposed amendment by clause 5(b) of the Bill, merely confirms a situation which has existed for a considerable number of years.

**2.6** The proposal in clause 6 of the Bill seeks to rectify the present legal situation.

**2.7** Clause 7 of the Bill contains the short title.

### **3. FINANCIAL IMPLICATIONS FOR STATE**

None.

### **4. ORGANISATIONS CONSULTED**

The Law Society of South Africa

The South African Council for 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

### **5. CONSTITUTIONAL IMPLICATIONS**

There are no known constitutional implications.

### **6. COMMUNICATION IMPLICATIONS**

To be undertaken by the Department of Land Affairs.

## 7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Land Affairs 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.

3

TH2890