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## GENERAL NOTICES

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### NOTICE 1447 OF 2009 DEPARTMENT OF HUMAN SETTLEMENTS

#### SECTIONAL TITLES SCHEMES MANAGEMENT BILL, 2009

I, Tokyo Mosima Gabriel Sexwale, Minister of Human Settlements hereby publishes the Sectional Titles Schemes Management Bill, 2009 for public comment. A draft Bill together with a Memorandum on the Objects of the Bill is attached.

Interested persons and institutions are invited to submit written comments on the draft Bill on or before 30 November 2009 to the Director-General, Department of Human Settlements, for the attention of the following person:

**Adv S S Burger**

**Street Address:**

Room 502  
Govan Mbeki House  
240 Walkerstreet  
Sunnyside  
Pretoria  
0002

**Postal Address:**

Private Bag X644  
Pretoria  
0001  
Fax: (012) 421 1429  
E-mail: [santie.burger@dhs.gov.za](mailto:santie.burger@dhs.gov.za)

# **SECTIONAL TITLES SCHEMES MANAGEMENT BILL**

**To provide for the establishment of bodies corporate to manage and control sections and common property in sectional title schemes and for that purpose to apply rules; for the establishment of a sectional titles schemes management regulation board; and to provide for incidental matters**

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**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:-

## **ARRANGEMENT OF ACT**

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## Definitions

1. (1) In this Act and the rules, unless the context otherwise indicates—

“**body corporate**”, in relation to a building and the land in a sectional title scheme, means the body corporate of that building referred to in section 2(1);

“**Court**” means a provincial or local division of the High Court having jurisdiction and, for the purposes of section 18, a magistrates' court having jurisdiction;

“**Department**” means the Department of Human Settlements;

“**Director-General**” means the Director-General: Human Settlements;

“**exclusive use area**” means a part or parts of the common property for the exclusive use by the owner or owners of one or more sections;

“**lease**” for the purposes of section 10 means a lease which—

- (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;

“**Minister**” means the Minister of Human Settlements;

“**prescribed**” means prescribed by this Act or by regulation;

“**regulation**” means a regulation made and in force under this Act;

“**rules**”, in relation to a building or buildings which has or have been divided into a section or sections and common property, means the management rules and conduct rules referred to in section 8(2) for the control, management, administration, use and enjoyment of the sections and common property;

“**special resolution**” means a resolution passed by a majority of not less than three-fourths of the votes (reckoned in value) and not less than three-fourths of the votes (reckoned in number) of members of a body corporate who are present or represented by proxy or by a representative recognized by law at a general meeting of which at least 30 days' written notice, specifying the proposed resolution, has been given, or a

resolution agreed to in writing by at least 75% of all the members of a body corporate (reckoned in number) and at least 75% of all such members (reckoned in value) personally or by proxy or by a representative of any such member recognized by law: Provided that in circumstances determined in the rules, a meeting of the body corporate may be convened for a date 30 days or less after notice of the proposed resolution has been given to all the members of the body corporate: Provided further that the written notice shall be deemed adequate if—

- (a) it has been delivered by hand to a member not less than 30 days prior to the relevant general meeting; or
- (b) it was dispatched by prepaid registered post not less than 30 days prior to such meeting to the address of a member's unit in the relevant scheme, or to such other address as a member may have indicated in writing for the purposes of such notice.

**“this Act”** includes the regulations;

**“unanimous resolution”** means a resolution—

- (a) passed unanimously by all the members of a body corporate who are present or represented by proxy or by a representative recognized by law at a general meeting of the body corporate of which at least 30 days' written notice, specifying the proposed unanimous resolution, has been given, and at which meeting at least 80% of all the members of a body corporate (reckoned in number) and at least 80% of all the members (reckoned in value) are present or so represented: Provided that in circumstances determined in the rules, a meeting of the body corporate may be convened for a date 30 days or less after notice of the proposed resolution has been given to all the members of the body corporate; or
- (b) agreed to in writing by all the members of the body personally or by proxy or by a representative of any such member recognized by law:

Provided that —

- (aa) a notice contemplated in that definition shall be deemed adequate if it has been delivered to, or dispatched to the address of a member, as contemplated in paragraphs (a) and (b), respectively, of the definition of 'special resolution';

- (bb) a member present or represented at a meeting contemplated in that definition, who himself, or through a proxy or representative, as the case may be, abstains from voting on the resolution in question, shall be regarded as having voted in favour of the resolution; and
- (cc) where the resolution in question adversely affects the proprietary rights or powers of any member as owner, the resolution shall not be regarded as having been passed unless such member consents in writing thereto.

**"Sectional Titles Act"** means the Sectional Titles Act, 1986 (Act No. 95 of 1986) as amended from time to time.

(2) the terms 'building', 'common property', 'conveyancer', 'deeds registry', 'developer', 'development scheme', 'land', 'land surveyor', 'local authority', 'owner', 'participation quota', 'quota', 'registrar', 'scheme', 'section', 'sectional mortgage bond', 'sectional plan', 'sectional title deed', 'sectional title register', 'Surveyor- General', 'undivided share in common property' and 'unit' apply in the interpretation of this Act as they are defined in the Sectional Titles Act.

## PART I

### BODIES CORPORATE

#### **Establishment, membership, name, capacities and first meeting**

2. (1) With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there shall be deemed to be established for that scheme a body corporate of which the developer and such person are members, and every person who thereafter becomes an owner of a unit in that scheme shall be a member of that body corporate.

(2) The developer shall cease to be a member of the body corporate when he ceases to have a share in the common property as contemplated in section 34(2) of the Sectional Titles Act, and any other member of the body corporate shall cease to be a member thereof when he ceases to be the owner of a unit in the scheme in question.

(3) The body corporate shall be designated as 'the Body Corporate of the .....(name).....Scheme, No .....' such name and number to be inserted being the name and number referred to in sections 5(3)(b) and 12(1)(a) of the Sectional Titles Act, respectively.

(4) The body corporate shall, subject to the provisions of this Act, be responsible for the enforcement of the rules referred to in section 8, and for the control, administration and management of the common property for the benefit of all owners.

(5) The provisions of the Companies Act, 1973 (Act No. 61 of 1973), shall not apply in relation to the body corporate.

(6) The body corporate shall have perpetual succession and shall be capable of suing and of being sued in its corporate name in respect of-

- (a) any contract entered into by it;
- (b) any damage to the common property;
- (c) any matter in connection with the land or building for which the body corporate is liable or for which the owners are jointly liable;
- (d) any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties under this Act or any rule; and
- (e) any claim against the developer in respect of the scheme if so determined by special resolution.

(7) (a) A developer shall convene a meeting of the members of the body corporate not later than 60 days after the establishment of the body corporate, the agenda of the meeting to be as prescribed in the management rules, at which meeting he shall furnish the members with—

- (i) a copy of the sectional plan;
- (ii) a certificate from the local authority to the effect that all rates due by the developer up to the date of the establishment of the body corporate have been paid; and

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(iii) proof of revenue and expenditure concerning the management of the scheme from the date of the first occupation of any unit until the date of the establishment of the body corporate.

(aa) The developer shall pay over to the body corporate any residue, as revealed by the proof referred to in paragraph (a)(iii).

(bb) A developer who fails to comply with any provision of paragraphs (a) or (aa), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(8) The developer shall promptly on demand pay any moneys due in terms of subsection 25(2)(e) of the Sectional Titles Act to the body corporate.

### Functions

3. (1) A body corporate referred to in section 2 shall perform the functions entrusted to it by or under this Act or the rules, and such functions shall include-

(a) to establish for administrative expenses a fund sufficient in the opinion of the body corporate for the repair, upkeep, control, management and administration of the common property (including reasonable provision for future maintenance and repairs), for the payment of rates and taxes and other local authority charges for the supply of electric current, gas, water, fuel and sanitary and other services to the building or buildings and land, and any premiums of insurance, and for the discharge of any duty or fulfillment of any other obligation of the body corporate;

(b) to require the owners, whenever necessary, to make contributions to such fund for the purposes of satisfying any claims against the body corporate: Provided that the body corporate shall require the owner or owners of a section or sections entitled to the right to the exclusive use of a part or parts of the common property, whether or not such

right is registered or conferred by rules made under the repealed Sectional Titles Act, 1971, to make such additional contribution to the fund as is estimated necessary to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts, including the provision of electricity and water, unless in terms of the rules the owners concerned are responsible for such costs;

- (c) to determine from time to time the amounts to be raised for the purposes aforesaid;
- (d) to raise the amounts so determined by levying contributions on the owners in proportion to the quotas of their respective sections;
- (e) to open and operate an account or accounts with a banking institution or a building society;
- (f) to insure the building or buildings and keep it or them insured to the replacement value thereof against fire and such other risks as may be prescribed;
- (g) to insure against such other risks as the owners may by special resolution determine;
- (h) subject to the provisions of section 23 and to the rights of the holder of any sectional mortgage bond, forthwith to apply any insurance money received by it in respect of damage to the building or buildings, in rebuilding and reinstating the building or buildings in so far as this may be effected;
- (i) to pay the premiums on any policy of insurance effected by it;
- (j) properly to maintain the common property (including elevators) and to keep it in a state of good and serviceable repair;
- (k) to comply with any notice or order by any competent authority requiring any repairs to or work in respect of the relevant land or building or buildings;
- (l) to comply with any reasonable request for the names and addresses of the persons who are the trustees of the body corporate in terms of



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the rules referred to in section 8, or who are members of the body corporate;

- (m) to notify the registrar and the local authority concerned of its *domicilium citandi et executandi*, which shall be its address for service of any process;
- (n) to ensure compliance with any law relating to the common property or to any improvement of land comprised in the common property;
- (o) to keep in a state of good and serviceable repair and properly maintain the plant, machinery, fixtures and fittings used in connection with the common property and sections;
- (p) subject to the rights of the local authority concerned, to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one section or of the common property or in favour of one section over the common property;
- (q) on the written request of any owner or registered mortgagee of a section, to produce to such owner or mortgagee, or any person authorized in writing by such owner or mortgagee, the policy or policies of insurance effected by the body corporate and the receipt or receipts for the last premium or premiums in respect thereof; and
- (r) in general, to control, manage and administer the common property for the benefit of all owners.

(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 resolution was passed.

(3) The body corporate shall, on the application of an owner or mortgagee of a unit, or any person authorized by such owner or mortgagee, certify in writing—

- (a) the amount determined as the contribution of that owner;

- (b) the manner in which such contribution is payable;
- (c) the extent to which such contribution has been paid by the owner; and
- (d) the amount of any rates and taxes paid by the body corporate in terms of section 24 and not recovered by it.

(4) The body corporate shall, for the purposes of effecting any insurance under subsection (1)(f), be deemed to have an insurable interest for the replacement value of the building and shall, for the purposes of effecting any other insurance under that subsection, be deemed to have an insurable interest in the subject-matter of such insurance.

#### **Powers**

4. The body corporate may exercise the powers conferred upon it by or under this Act or the rules, and such powers shall include the power-

- (a) to appoint such agents and employees as it may deem fit;
- (b) when essential for the proper fulfillment of its duties, to purchase or otherwise acquire, take transfer of mortgage, sell, give transfer of, or hire or let units;
- (c) to purchase, hire or otherwise acquire movable property for the use of owners for their enjoyment or protection, or in connection with the enjoyment or protection of the common property;
- (d) where practicable, to establish and maintain on the common property suitable lawns, gardens and recreation facilities;
- (e) to borrow moneys required by it in the performance of its functions or the exercise of its powers;
- (f) to secure the repayment of moneys borrowed by it and the payment of interest thereon, by negotiable instrument or the hypothecation of unpaid contributions (whether levied or not), or by mortgaging any property vested in it;
- (g) to invest any moneys of the fund referred to in section 3(1)(a);

- (h) to enter into an agreement with the local authority or any other person or body for the supply to the building or buildings and the land of electric current, gas, water, fuel and sanitary and other services;
- (i) to enter into an agreement with any owner or occupier of a section for the provision of amenities or services by 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 10;
- (j) to do all things reasonably necessary for the enforcement of the rules and for the control, management and administration of the common property; and
- (k) if it is unable to obtain a unanimous resolution, subject to the provisions of proviso (cc) in the definition of a unanimous resolution in section 1, approach the Court for relief.

#### **Functions and powers of bodies corporate to be performed or exercised by trustees**

5. (1) The functions and powers of the body corporate shall, subject to the provisions of this Act, the rules and any restriction imposed or direction given at a general meeting of the owners of sections, be performed and exercised by the trustees of the body corporate holding office in terms of the rules.

(2) For the purposes of an agreement in respect of the beacons and boundaries of the common property required in terms of the Land Survey Act, 1997 (Act No. 8 of 1997), the trustees shall be deemed to be the owner of the land.

#### **Fiduciary position of trustees**

6. (1) Each trustee of a body corporate shall stand in a fiduciary relationship to the body corporate.

(2) Without prejudice to the generality of the expression 'fiduciary relationship', the provisions of subsection (1) shall imply that a trustee—

- (a) shall in relation to the body corporate act honestly and in good faith, and in particular—
  - (i) shall exercise such powers as he may have to manage or represent the body corporate in the interest and for the benefit of the body corporate; and
  - (ii) shall not act without or exceed the powers aforesaid; and
- (b) shall avoid any material conflict between his own interests and those of the body corporate, and in particular—
  - (i) shall not derive any personal economic benefit to which he is not entitled by reason of his office as trustee of the body corporate, from the body corporate or from any other person in circumstances in which that benefit is obtained in conflict with the interests of the body corporate;
  - (ii) shall notify every other trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he may have in any contract of the body corporate.
- (3) (a) A trustee of a body corporate whose *mala fide* or grossly negligent act or omission has breached any duty arising from his fiduciary relationship, shall be liable to the body corporate for—
  - (i) any loss suffered as a result thereof by the body corporate; or
  - (ii) any economic benefit derived by the trustee by reason thereof.
- (b) Where a trustee fails to comply with the provisions of subsection (2)(b)(ii) and it becomes known to the body corporate that the trustee has an interest referred to in that subsection in any contract of the body corporate, the contract in question shall, at the option of the body corporate, be voidable: Provided that where the body corporate chooses not to be bound, a Court may on application by any interested person, if the Court is of the opinion that in the circumstances it is fair to order that such contract shall nevertheless

be binding on the parties, give an order to that effect, and may make any further order in respect thereof which it may deem fit.

(4) Except as regards his duty referred to in subsection (2)(a)(i), any particular conduct of a trustee shall not constitute a breach of a duty arising from his fiduciary relationship to the body corporate, if such conduct was preceded or followed by the written approval of all the members of the body corporate where such members were or are cognizant of all the material facts.

### **Proceedings on behalf of bodies corporate**

7. (1) When an owner is of the opinion that he and the body corporate have suffered damages or loss or have been deprived of any benefit in respect of a matter mentioned in section 2(6), and the body corporate has not instituted proceedings for the recovery of such damages, loss or benefit, or where the body corporate does not take steps against an owner who does not comply with the rules, the owner may initiate proceedings on behalf of the body corporate in the manner prescribed in this section.

(2) (a) Any such owner shall serve a written notice on the body corporate calling on the body corporate to institute such proceedings within one month from the date of service of the notice, and stating that if the body corporate fails to do so, an application to the Court under paragraph (b) will be made.

(b) If the body corporate fails to institute such proceedings within the said period of one month, the owner may make application to the Court for an order appointing a *curator ad litem* for the body corporate for the purposes of instituting and conducting proceedings on behalf of the body corporate.

(3) The court may on such application, if it is satisfied—

(a) that the body corporate has not instituted such proceedings;

(b) that there are prima facie grounds for such proceedings; and

(c) that an investigation into such grounds and into the desirability of the institution of such proceedings is justified,

appoint a provisional *curator ad litem* and direct him to conduct such investigation and to report to the Court on the return day of the provisional order.

(4) The Court may on the return day discharge the provisional order referred to in subsection (3), or confirm the appointment of *the curator ad litem* for the body corporate, and issue such directions as it may deem necessary as to the institution of proceedings in the name of the body corporate and the conduct of such proceedings on behalf of the body corporate by the *curator ad litem*.

(5) A provisional *curator ad litem* appointed by the Court under subsection (3) and a *curator ad litem* whose appointment is confirmed by the Court under subsection (4) shall, in addition to the powers expressly granted by the Court in connection with the investigation, proceedings and enforcement of a judgment, have such powers as may be prescribed by regulation.

(6) If the disclosure of any information about the affairs of a body corporate to a provisional *curator ad litem* or a *curator ad litem* would in the opinion of the body corporate be harmful to the interests of the body corporate, the Court may on an application for relief by that body corporate, and if it is satisfied that the said information is not relevant to the investigation, grant such relief.

(7) The Court may, if it appears that there is reason to believe that an applicant in respect of an application under subsection (2) will be unable to pay the costs of the respondent body corporate if successful in its opposition, require sufficient security to be given for those costs and the costs of the provisional *curator ad litem* before a provisional order is made.

## PART II

### BODY CORPORATE RULES & PARTICIPATION QUOTAS

#### Rules

8. (1) A scheme shall as from the date of the establishment of the body corporate be controlled and managed, subject to the provisions of this Act, by means of rules.

(2) The rules shall provide for the control, management, administration, use and enjoyment of the sections and the common property, and shall comprise—

- (a) management rules, prescribed by regulation, which rules may be substituted, added to, amended or repealed by the developer when submitting an application for the opening of a sectional title register, to the extent prescribed by regulation, and which rules may be substituted, added to, amended or repealed from time to time by unanimous resolution of the body corporate as prescribed by regulation;
- (b) conduct rules, prescribed by regulation, which rules may be substituted, added to, amended or repealed by the developer when submitting an application for the opening of a sectional title register, and which rules may be substituted, added to, amended or repealed from time to time by special resolution of the body corporate: Provided that any conduct rule substituted, added to or amended by the developer, or any substitution, addition to or amendment of the conduct rules by the body corporate, may not be irreconcilable with any prescribed management rule contemplated in paragraph (a).

(3) Any management or conduct rule made by a developer or a body corporate shall be reasonable, and shall apply equally to all owners of units put to substantially the same purpose.

(4) The rules referred to in subsection (2) shall as from the date of establishment of the body corporate be in force in respect of the building or buildings and land concerned, and shall bind the body corporate and the owners of the sections and any person occupying a section.

- (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 to, amendment or repeal.
- (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 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.

(6) The body corporate shall, on the application of any owner or any person having a registered real right in or over a unit, or any person authorized in writing by such owner or person, make any rules then in force available for inspection to such owner, person or authorized person.

(7) 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) 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;
- (b) include a schedule indicating to which member each such part is allocated.

#### **Effect of quotas and variation thereof**

9. (1) Subject to the provisions of subsection (2) of this section, the quota of a section shall determine—

- (a) the value of the vote of the owner of the section, in any case where the vote is to be reckoned in value;
- (b) the undivided share in the common property of the owner of the section; and
- (c) subject to the provisions of section 3(1)(b), the proportion in which the owner of the section shall make contributions for the purposes of section 3(1)(a), or may in terms of section 20(1) be held liable for the



payment of a judgment debt of the body corporate of which he is a member.

(2) Subject to the provisions of section 3(1)(b), the developer may, when submitting an application for the opening of a sectional title register, or the members of the body corporate may by special resolution, make rules under section 8(5) by which a different value is attached to the vote of the owner of any section, or the liability of the owner of any section to make contributions for the purposes of section 3(1)(a) or 20(1) is modified: Provided that where an owner is adversely affected by such a decision of the body corporate, his written consent must be obtained: Provided further that no such change may be made by a special resolution of the body corporate until such time as there are owners, other than the developer, of at least 30 per cent of the units in the scheme: Provided further that, in the case where the developer alienates a unit before submitting an application for the opening of a sectional title register no exercise of power to make a change conferred on the developer by this subsection shall be valid unless the intended change is disclosed in the deed of alienation in question.

### **PART III**

#### **DEALINGS WITH COMMON PROPERTY, SECTIONS AND EXCLUSIVE USE RIGHTS**

##### **Alienation and letting of common property**

10. The owners and holders of a right of extension contemplated in section 25 of the Sectional Titles Act 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 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.

##### **Expropriation of common property**

11. (1) Whenever the whole or any part of, or any right in, the common property is expropriated under the provisions of any law, service of a notice of expropriation on the body corporate shall be deemed to be service thereof on the

registered owner of every section in the building or buildings concerned, and each such owner shall be deemed to have appointed the trustees of the body corporate concerned as his duly authorized agents and representatives—

- (a) to negotiate and settle the compensation payable to him, and to that end to employ attorneys, advocates and other experts; and
- (b) on his behalf to receive and give valid acquittance for any compensation moneys paid.

(2) Any compensation moneys received by the trustees on behalf of the owners in terms of subsection (1), shall be paid to the owners in accordance with their participation quotas after they have received notice of such distribution in writing: Provided that an owner may notify the trustees before such moneys are so distributed that he considers such a distribution inequitable, in which event the compensation moneys shall be distributed-

- (a) in accordance with a division approved by unanimous resolution; or
- (b) in accordance with a division approved by an arbitrator, being a practising advocate of not less than ten years' standing or a practising attorney of not less than ten years' standing, nominated by the trustees.

### **Exercise of Right of Extension**

12. The body corporate shall only exercise or alienate or transfer a right of extension of the scheme by the addition of sections in terms of section 25(6) of the Sectional Titles Act 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 that a member or mortgagee shall not withhold such approval without good cause in law.

### **Extension of common property**

13. (1) A body corporate, authorized thereto in writing by all of its members, may purchase land to extend the common property.

(2) Land purchased 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.

**Servitudes in favour of or burdening the land**

14. The owners may by special resolution direct the body corporate—
- (a) to execute on their behalf a servitude or restrictive agreement burdening the land shown on the relevant sectional plan; and
  - (b) to accept on their behalf a servitude or restrictive agreement benefiting the said land.

**Subdivision and consolidation of sections**

15. If an owner proposes to subdivide a section or to consolidate two or more sections, the owner shall apply for the consent of the trustees of the body corporate, which consent shall not unreasonably be withheld.

**Extension of sections**

16. If an owner proposes to extend the boundaries or floor area of a section, the owner shall apply for the approval of the body corporate, authorized by a special resolution of its members.

**Delineation and cession of exclusive use rights**

17. (1) The body corporate, duly authorized thereto by a unanimous resolution of its members, may request the delineation and cession of exclusive use rights to particular owners in terms of sub-section 27(2) of the Sectional Titles Act.

(2) The body corporate may cede the right to the exclusive use of a part or parts of the common property delineated on the sectional plan to the owner or owners on whom such right has been conferred by the body corporate.

**PART IV****OWNERS, ADMINISTRATORS AND BUILDINGS****Duties of owners**

18. (1) An owner shall-
- (a) permit any person authorized in writing by the body corporate, at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his section or exclusive use area for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and capable of being used in connection with the enjoyment of any other section or common property, or for the purposes of ensuring that the provisions of this Act and the rules are being observed;
  - (b) forthwith carry out all work that may be ordered by any competent public or local authority in respect of his section, other than such work as may be for the benefit of the building generally, and pay all charges, expenses and assessments that may be payable in respect of his section;
  - (c) repair and maintain his section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition;
  - (d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other owners or other persons lawfully on the premises;
  - (e) not use his section or exclusive use area, or permit it to be used, in such a manner or for such purpose as shall cause a nuisance to any occupier of a section;

- (f) notify the body corporate forthwith of any change of ownership in his section and of any mortgage or other dealing in connection with his section; and
  - (g) when the purpose for which a section is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such section to be used for any other purpose: Provided that with the written consent of all owners such section may be used for another purpose.
- (2) (a) Any owner who is of the opinion that any refusal of consent of another owner in terms of the proviso to subsection (1)(g) is unfairly prejudicial, unjust or inequitable to him, may within six weeks after the date of such a refusal make an application in terms of this subsection to the Court.
- (b) If on any such application it appears to the Court that the refusal in question is unfairly prejudicial, unjust or inequitable to the applicant, and if the Court considers it just and equitable, the Court may with a view to bringing the dispute to an end make such order as it deems fit, including an order that it shall be deemed that the requirement stated in the proviso to subsection (1)(g) is met, an order that the provisions of section 14 of the Sectional Titles Act which the Court deems appropriate, shall be applied with reference to the amendment of the registered sectional plan in question, any other supplementary order as the Court deems fit, and an order concerning costs as it deems appropriate.

### **Insurance by owners**

19. (1) Notwithstanding the existence of a valid policy of insurance effected by the body corporate pursuant to the provisions of section 3(1)(f), an owner may effect a policy of insurance in respect of any damage to his section arising from risks covered by the policy effected by the body corporate.

- (2) Where a policy of insurance contemplated in subsection (1) is in force, and—

- (a) where the damage to the section is made good by the body corporate pursuant to the provisions of section 3(1)(h), the insurer shall not be liable in terms of the policy of insurance effected by the owner;
  - (b) where the damage to the section is covered by the policy of insurance effected by the body corporate pursuant to the provisions of section 3(1)(f), but is not made good by the body corporate, the insurer shall be liable in terms of the policy of insurance effected by the owner; and
  - (c) where the damage to the section is not covered by the policy of insurance effected by the body corporate as aforesaid, the terms and conditions of the policy of insurance effected by the owner shall apply.
- (3) Nothing in this section contained shall limit the rights of an owner to insure against risks other than damage to his section.

**Recovery from owners of unsatisfied judgment against bodies corporate, and non-liability of bodies corporate for debts and obligations of developers**

20. (1) If a creditor of a body corporate has obtained judgment against the body corporate, and such judgment, notwithstanding the issue of a writ, remains unsatisfied, the judgment creditor may, without prejudice to any other remedy he may have, apply to the Court which gave the judgment, for the joinder of the members of the body corporate in their personal capacities as joint judgment debtors in respect of the judgment debt and, upon such joinder, the judgment creditor may recover the amount of the judgment debt still outstanding from the said members on a pro rata basis in proportion to their respective quotas or a determination made in terms of section 9(2): Provided that any member who has paid the contributions due by him or her in terms of section 3(1)(b) to the body corporate in respect of the same debt prior to the judgment against the body corporate may, not be joined as a joint judgment debtor in respect of the judgment debt.

(2) No debt or obligation arising from any agreement between the developer and any other person shall be enforceable against the body corporate.

**Appointment of administrators**

21. (1) A body corporate, a local authority, a judgment creditor of the body corporate for an amount of not less than R500, or any owner or any person having a registered real right in or over a unit, may apply to the Court for the appointment of an administrator.

(2) (a) The Court may in its discretion appoint an administrator for an indefinite or a fixed period on such terms and conditions as to remuneration as it deems fit.

(b) The remuneration and expenses of the administrator shall be administrative expenses within the meaning of section 3(1)(a).

(3) The administrator shall, to the exclusion of the body corporate, have the powers and duties of the body corporate or such of those powers and duties as the Court may direct.

(4) The Court may, in its discretion and on the application of any person or body referred to in subsection (1) remove from office or replace the administrator or, on the application of the administrator, replace the administrator.

(5) The Court may, with regard to any application under this section, make such order for the payment of costs as it deems fit.

**Destruction of or damage to buildings**

22. (1) The building or buildings comprised in a scheme shall, for the purposes of this Act, be deemed to be destroyed—

(a) upon the physical destruction of the building or buildings;

(b) when the owners by unanimous resolution so determine and all holders of registered sectional mortgage bonds and the persons with registered real rights concerned, agree thereto in writing; or

(c) when the Court is satisfied that, having regard to all the circumstances, it is just and equitable that the building or buildings shall be deemed to have been destroyed, and makes an order to that effect.

(2) In any case where an order is made under subsection (1)(c), the Court may impose such conditions and give such directions as it deems fit for the purpose of adjusting the effect of the order between the body corporate and the owners and mutually among the owners, the holders of registered sectional mortgage bonds and persons with registered real rights.

(3) (a) Where the building or buildings is or are damaged or is or are destroyed within the meaning of subsection (1), the owners may by unanimous resolution, or the Court may by order, authorize a scheme—

- (i) for the rebuilding and reinstatement in whole or in part of the building or buildings;
- (ii) for the transfer of the interests of owners of sections which have been wholly or partially destroyed, to the other owners.

(b) In the exercise of their powers under this subsection, the owners may pass such resolution or the Court may make such order as they or it may deem necessary or expedient to give effect to the scheme, in connection with *inter alia*—

- (i) the application of insurance moneys received by the body corporate in respect of damage to or the destruction of the building or buildings;
- (ii) the payment of money by or to the body corporate or by or to the owners or by or to one or more of them;
- (iii) an amendment of the sectional plan so as to include in the common property an addition thereto or subtraction therefrom;
- (iv) the variation of the quota of any section; or
- (v) the imposition of conditions.

(4) An application may, for the purposes of this section, be made to the Court by the body corporate or by any owner or by any holder of a registered sectional mortgage bond or a registered lease or by any insurer who has effected insurance on the building or buildings or any section therein, or by the local authority.



(5) Any insurer who has effected insurance on the building or buildings or any part thereof (being insurance against destruction of sections or damage to the building or buildings) shall, on any application to the Court under this section, have the right to intervene in the proceedings.

(6) (a) The Court may, on the application of a body corporate or any member thereof or any holder of a registered real right concerned, or any judgment creditor, by order make provision for the winding-up of the affairs of the body corporate.

(b) The Court may, by the same or any subsequent order, declare the body corporate dissolved as from a date specified in the order.

(7) The Court may, with regard to any application under this section, make such order for the payment of costs as it deems fit.

(8) Where two or more buildings are comprised in a scheme, and only one or part of one of the said buildings is damaged or destroyed, the provisions of this section shall apply *mutatis mutandis* as if the said buildings were one building and part of such building has been damaged or destroyed.

### **Disposal on destruction of buildings**

23. When in terms of section 22 the building or buildings comprised in a scheme is or are deemed to be destroyed and the owners have by unanimous resolution resolved not to rebuild the building or buildings, the body corporate shall lodge with the Registrar of Deeds a notification in the form prescribed under the Sectional Titles Act, 1986 of such destruction and a copy of the relevant resolution of the owners as certified by two trustees of the body corporate.

### **Valuation of land and buildings and recovery of rates by local authorities**

24. (1) (a) When a local authority causes land and buildings comprised in a scheme to be valued for any lawful purposes, the land and buildings thereon shall, subject to the provisions of subsection (3), be valued as if they were owned by a single owner, and for the purposes of such valuation and all purposes incidental thereto (including an objection to a valuation), the land and

buildings thereon shall be deemed to be owned by the body corporate.

(b) A separate valuation shall be made of—

- (i) the land; and
- (ii) the building or buildings.

(2) Subject to the provisions of subsection (3) of this section, and section 21, the local authority may recover any rates and taxes levied by it, from the body corporate.

(3) When by law provision has been made for the separate rating of units, each relevant unit shall for the purposes of valuation and the levying and recovery of rates by a local authority be deemed to be a separate entity.

## PART V

### MISCELLANEOUS

#### **Sectional Titles Schemes Management Regulation Board**

25. (1) There is hereby established a Sectional Titles Schemes Management Regulation Board (in this section referred to as the Regulation Board), which shall—

- (a) make recommendations to the Minister concerning any matter specified in section 26 in regard to which the Minister may make regulations;
- (b) keep the working and implementation of this Act and the regulations under regular review and which may make recommendations to the Minister in regard to any amendments or other action which may be advisable; and
- (c) advise the Minister on any matter referred to it by the Minister.

(2) The Regulation Board shall consist of the following members—

- (a) a person nominated by the Minister, who shall act as chairperson at the proceedings of the Regulation Board;

- (b) seven members appointed by the Minister, who shall consist of persons with a specialised knowledge of the management of sectional titles schemes, including—
- (i) an owner of a unit in a residential scheme;
  - (ii) an owner of a unit in a commercial scheme;
  - (iii) an owner of a unit in a retail scheme;
  - (iv) a managing agent nominated by the National Association of Managing Agents;
  - (v) a person nominated by the South African Property Owners Association;
  - (vi) a person nominated by the Banking Association of South Africa; and
  - (vii) an official of the Department of Human Settlements.

(3) For every member of the regulation board there shall be an alternate member appointed in the same manner as such member, and any alternate member so appointed shall act in the place of the member in respect of whom he has been appointed as alternate member, during such member's absence or inability to act as a member of the Regulation Board.

(4) The chairperson nominated in terms of subsection (2) may designate a person as an alternate chairperson when she or he is unable to attend.

(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 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.

(6) A member of the Regulation Board appointed by the Minister shall hold office for the period determined by the Minister, but the Minister may, if in the Minister's opinion

there is good reason for doing so, terminate the appointment of such a member at any time before the expiration of such member's period of office.

(7) If a member of the Regulation Board dies or vacates his office before the expiration of that member's period of office, the Minister may, subject to the provisions of subsection (2)(c), appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed.

(8) A member of the Regulation Board whose period of office has expired, may be reappointed.

(9) A member of the Regulation Board, excluding a member in the fulltime service of the State, shall, while he is engaged in the business of the regulation board, be paid such remuneration and travelling and subsistence allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(10) In the absence of the chairperson, the official of the Department of Human Settlements shall act as chairperson of the Regulation Board.

(11) (a) The Regulation Board shall from time to time meet at such times and places as are determined by the chairperson.

(b) The Minister may at any time direct the chairperson of the Regulation Board to convene a meeting of the board at a time and place specified by the Minister.

(12) (a) Five members of the Regulation Board, one of whom shall be a member referred to in subsection (2)(a), shall form a quorum for a meeting of the board.

(b) A decision of a majority of the members of the Regulation Board present at any meeting shall be a decision of the Regulation Board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(13) The Regulation Board may regulate the proceedings at its meetings as it may think fit, and shall cause minutes of such proceedings to be kept.

**Regulations**

26. The Minister may, after consultation with the Sectional Titles Schemes Management Regulation Board, make regulations in regard to—

- (a) any matter required or permitted to be prescribed by regulation under this Act; and
- (b) generally, any matter which he considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

**Savings and transitional provisions**

27. (1) Where an owner, prior to 1 June 1988, acquired in terms of an agreement or was granted in terms of rules made under the repealed Sectional Titles Act, 1971 or any other provision, the right to the exclusive use of a part or parts of common property, the body corporate concerned shall, if so requested by the owner, transfer such right to the owner in terms of section 60 of the Sectional Titles Act, 1986.

(2) Any reference in any law or document to a body corporate established in terms of the repealed Sectional Titles Act, 1971, or any other provisions as a 'Controlling Body' referred to in section 28(3) of that Act, shall after 1 June 1988 be construed as a reference to a 'body corporate' referred to in section 2 of this Act.

(3) Rules decided on by unanimous resolution under the repealed Sectional Titles Act, 1971, or any other provision before 1 June 1988 replacing rules contained in Schedule 1 to that Act, and at the said date not yet lodged with the registrar as contemplated in section 27(3) of that Act, did, where not so lodged within the said period, lapse and are deemed in any such case to have been replaced, subject to addition, amendment or repeal as contemplated in section 8(2)(a) by prescribed management rules contemplated in the last-mentioned section.

- (4) (a) Unaltered rules contained in Schedule 1 to the repealed Sectional Titles Act, 1971, or any other provision and applying immediately prior to 1 June 1988 in respect of any scheme, lapsed on that date, and such rules are deemed to have been replaced, subject to addition, amendment or repeal as contemplated in section 8(2)(a), by

prescribed management rules contemplated in those last-mentioned sections; and

- (b) unaltered rules contained in Schedule 2 to the repealed Sectional Titles Act, 1971, or any other provision and so applying in respect of any scheme, lapsed on that date, and such rules are deemed to have been replaced, subject to addition, amendment or repeal as contemplated in section 8(2)(b), by prescribed conduct rules contemplated in those last-mentioned sections.

(5) Any rules other than rules referred to in subsection (4) of this section, which applied in respect of a scheme immediately prior to 1 June 1988, shall, subject to such substitution, addition, amendment or repeal as contemplated in paragraph (a) or (b) of section 8(2) of this Act, as the case may be, remained in force after the said date, except to the extent that any such rule may be irreconcilable with any prescribed management rule contemplated in section 8(2)(a), in which case the management rule concerned applies: Provided that any such rules were as from 1 June 1988 deemed to be supplemented by any rule for which it did not make provision but for which provision was made in the prescribed rules.

(6) Any rule made under the Sectional Titles Act shall be deemed to have been made under this Act.

#### **Amendment of Act 95 of 1986**

28. The Sectional Titles Act, 1986 (Act No. 95 of 1986) is hereby amended to the extent set out in the Schedule.

#### **Short title and commencement**

29. This Act shall be called the Sectional Titles Schemes Management Act, 2009, and shall come into operation on a date to be fixed by the President by proclamation in the Gazette.

## SCHEDULE

### AMENDMENT OF THE SECTIONAL TITLES ACT, 1986

#### (ACT NO 95 OF 1986)

#### SECTION 28

| Provision | Extent of repeal or amendment   |
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| Preamble  | <p>1. The substitution for the preamble of the following preamble:</p> <p style="padding-left: 40px;">"To provide for the division of buildings into sections and common property and for the acquisition of separate ownership in sections coupled with joint ownership in common property; the control of certain incidents attaching to separate ownership in sections and joint ownership in common property; the transfer of ownership of sections and the registration of sectional mortgage bonds over, and real rights in, sections; the conferring and registration of rights in, and the disposal of, common property; <b>[the establishment of bodies corporate to control common property and for that purpose to apply rules;]</b> and the establishment of a sectional titles regulation board; and to provide for incidental matters."</p> |
| Section 1 | <p>2. (a) The repeal of :</p> <ul style="list-style-type: none"> <li>(i) the definition of "rules";</li> <li>(ii) the definition of "special resolution";</li> <li>(iii) the definition of "unanimous resolution";</li> <li>(iv) subsection (2);</li> </ul>   |

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|            | <p>(v) subsection (3); and</p> <p>(vi) subsection (3A); and</p> <p>(b) the substitution for the existing definition of "body corporate" of the following definition:</p> <p>"'body corporate', in relation to a building and the land on which such building is situated, means the body corporate of that building <b>[referred to in section 36 (1)]</b> as defined in the <u>Sectional Titles Schemes Management Act</u>."</p>   |
| Section 11 | <p>3. The substitution for subsection (3)(e) of the following subsection:</p> <p>"(e) a certificate by a conveyancer stating that the rules prescribed in terms of <u>section 8 of the Sectional Titles Schemes Management Act</u> <b>[section 35 (2)]</b> are applicable, and containing the other rules (if any) substituted by the developer for those rules as contemplated in that section;"</p>   |
| Section 17 | <p>4. The substitution for subsections (1) and (2) of the following subsections:</p> <p>"(1) <b>[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]</b> <u>If the direction contemplated in section 10 of the Sectional Titles Schemes Management Act has been obtained</u>, the body corporate shall notwithstanding any provisions of section 20 of the Deeds Registries Act, but subject to compliance with any law relating to the subdivision of land or to the letting of a part of land, as the case may</p> |



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|            | <p>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.</p> <p>(2) Any transaction in pursuance of a resolution referred to in <b>[subsection (1)]</b> <u>section 10 of the Sectional Titles Schemes Management Act</u> shall be accompanied by a copy of the relevant resolution, certified by two trustees of the body corporate: Provided that where the transaction in question requires to be notarially executed, such resolution so certified shall be produced to the notary public concerned and be retained by him in his protocol."</p> |
| Section 19 | <p>5. (a) Repeal of subsections (1) and (2); and</p> <p>(b) substitution for subsection (3) of the following subsection:</p> <p><u>"(3) Whenever an expropriation has taken place in terms of section 11 of the Sectional Titles Schemes Management Act, the provisions of section 17 (3) (a) and (b) of this Act and sections 31 (4) and 32 (4) of the Deeds Registries Act shall apply mutatis mutandis to a transfer pursuant to an expropriation of land or a servitude or other real right in land comprising common property."</u></p>   |
| Section 21 | <p>6. Substitution for subsection (1) of the following subsection:</p> <p>"(1) If an owner of a section proposes to subdivide his</p>  |

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|            | <p>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, <b>[which consent shall not unreasonably be withheld,]</b> <u>as required in terms of section 15 of the Sectional Titles Schemes Management Act</u>, 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."</p>   |
| Section 24 | <p>7. Substitution for subsection (3) of the following subsection:</p> <p>"(3) If an owner of a section proposes to extend the boundaries or floor area of his or her section, he or she shall with the approval of the body corporate <b>[, authorized by a special resolution of its members,]</b> <u>as provided for in terms of section 16 of the Sectional Titles Schemes Management Act</u>, cause the land surveyor or architect concerned to submit a draft sectional plan of the extension to the Surveyor-General for approval."</p>  |
| Section 25 | <p>8. (a) repeal of subsection (3); and</p> <p>(b) substitution for subsection (6) of the following subsection:</p> <p>"(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 the land contemplated in section 26, shall vest in the body corporate, which shall be entitled, subject to this section and after compliance, with the necessary changes, with the requirements of paragraphs (a), (b), (c), (d) and (g) of subsection (2), to obtain a</p> |

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|            | <p>certificate of real right in the prescribed form in respect thereof: <b>[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.]</b>"</p>  |
| Section 26 | <p>9. (a) Repeal of subsection (1); and</p> <p>(b) substitution for subsection (2) of the following subsection:</p> <p>"(2) Land purchased by a body corporate in terms of <b>[subsection (1)]</b> <u>section 13 of the Sectional Titles Schemes Management Act</u> 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."</p>   |
| Section 27 | <p>10. (a) Substitution for subsection (2) of the following subsection:</p> <p>"(2) A body corporate <b>[, duly authorized thereto by a unanimous resolution of its members, may,]</b> <u>may, if duly authorised in terms of section 17 (1) of the Sectional Titles Schemes Management Act</u> and subject to the provisions of section 5 (1), request an architect or land surveyor to apply to the Surveyor-General for the delineation on a sectional plan in the manner prescribed of a part or parts of the common property in terms of section 5 (3) (f) for the exclusive use by the owner or owners of one or more sections: Provided that no such</p> |

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|             | <p>delineation shall be made on the sectional plan in terms of this subsection if such delineation will encroach upon a prior delineation on the sectional plan of a part of the common property for the exclusive use by one or more of the owners.", and</p> <p>(b) substitution for subsection (3) of the following subsection:</p> <p><b>"(3) [The body corporate, duly authorized thereto by a unanimous resolution of its members, shall transfer the] <u>A right to the exclusive use of a part or parts of the common property delineated on the sectional plan in terms of subsection (2) shall be transferred</u> to the owner or owners on whom such right has been conferred by the body corporate by the registration of a notarial deed entered into by the parties and in which the body corporate shall represent the owners of all the sections as transferor."</b></p> |
| Section 27A | 11. Repeal of section.   |
| Section 29  | <p>12. (a) Repeal of subsection (1); and</p> <p>(b) substitution for subsection (2) of the following subsection:</p> <p><b>"(2) Every [such] servitude or agreement <u>referred to in section 14 of the Sectional Titles Schemes Management Act</u> shall be embodied in a notarial deed and shall be registered by the registrar by noting such deed on the schedule of servitudes and conditions referred to in section 11 (3) (b) and on the title deeds of any party to such servitude or restrictive agreement whose title deeds are</b></p>  |

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|                                  | registered in the land register.”.   |
| Section 32                       | 13. Repeal of subsections (3) and (4).   |
| Sections 35 to 48<br>(inclusive) | 14. Repeal of sections.  |
| Section 49                       | 15. (a) Repeal of subsection (1); and<br><br>(b) substitution for subsection (2) of the following subsection:<br><br>“(2) Upon receipt of <b>[such]</b> a notification <u>in terms of section 23 of the Sectional Titles Schemes Management Act</u> the registrar shall make an entry thereof in the relevant sectional title register.”.  |
| Section 51                       | 16. Repeal of section.   |
| Section 55                       | 17. Repeal of subsection (k).  |
| Section 60                       | 18. (a) Substitution for subsection (3) of the following subsection:<br><br>“(3) <u>The right to the exclusive use of a part or parts of common property referred to in section 27(1) of the Sectional Titles Schemes Management Act shall be transferred to the owner concerned 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.</u> ”;<br>and<br><br>(b) repeal of subsections (4) to (8) (inclusive). |

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| Section 60A | <p>(a) Substitution for subsection (3) of the following subsection:</p> <p><u>“(3) The right to the exclusive use of a part or parts of common property referred to in section 27(1) of the Sectional Titles Schemes Management Act shall be transferred to the owner concerned 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.”;</u></p> <p>and</p> <p>(b) repeal of subsections (4) to (8) (inclusive).</p> |
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## DEPARTMENT OF HUMAN SETTLEMENTS

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### MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES SCHEMES MANAGEMENT BILL, 2009

#### 1. OBJECTS

- 1.1 The main aim of the Bill is, in respect of the management of sectional title schemes, to give effect to Cabinet's strategy to bring all housing-related legislation currently administered by other Departments under the administration of the Department of Human Settlements ("the Department"). In terms of the Breaking New Ground, the mandate of the Department has been expanded to encompass the entire residential market. One of the Department's tasks in the mandate is to ensure that all housing matters reside under one roof.
- 1.2 The Department of Rural Development and Land Reform is at present responsible for the administration of the Sectional Titles Act, 1986 (Act No. 95 of 1986) ("the Act") that currently deals with the survey and registration of sectional plans and the registration of real rights in sectional title units as well as the management and administration of sectional title schemes. The Department of Rural Development and Land Reform deals primarily with registration and survey issues. Its mandate does not extend to dealing with complaints from the public or dealing with problems arising from scheme governance.
- 1.3 The aim of the Sectional Titles Schemes Management Bill is to remove the scheme governance provisions currently contained in the Sectional Titles Act, as amended, and to incorporate these provisions in a new Act in a more user-friendly format but without changing the substance of the provisions

- 1.4 The Bill will —
- 1.4.1 remove the scheme management provisions from the Act;
  - 1.4.2 incorporate the scheme management provisions in a new statute to be administered by the Minister of Human Settlements; and
  - 1.4.3 re-arrange the scheme management provisions so as to make them more understandable to the members of the public and the persons and authorities who must implement these provisions, but without substantially changing their content.
- 1.5 The first part of the Bill contains definitions. The remainder of the Bill is divided into Parts, arranged as follows:
- 1.5.1 Part I deals with the establishment, membership, name, capacity, functions and powers of sectional title bodies corporate as well as the fiduciary duties of trustees.
  - 1.5.2 Part II covers the rules applicable to bodies corporate and sectional owners and the allocation of participation quotas to sectional owners in a sectional title scheme.
  - 1.5.3 Part III regulates legal transactions with regard to the common property, the sectional title units and the rights of exclusive use in a sectional title scheme.
  - 1.5.4 Part IV deals with the duties of owners, insurance, recovery of unsatisfied judgment debts from owners, the appointment of an administrator for the scheme and the dissolution or



reconstruction of the scheme on destruction of or damage to the buildings in the scheme.

1.5.5 Part V deals with miscellaneous matters, including the establishment of a Sectional Titles Schemes Management Regulation Board to advise and make recommendations to the Minister.

1.6 Amendments to the Act are set out in a Schedule to the Bill.

1.7 The Act will retain all provisions regulating the survey and registration aspects of sectional title schemes and will continue to operate under the Minister of Rural Development and Land Reform.

1.8 The Sectional Titles Schemes Management Bill, 2009 has been drafted in close consultation with the Department of Rural Development and Land Reform and a copy of a letter from the Chief Registrar of Deeds dated 1 August 2008 approving the Bill in principle is attached to this Memorandum.

## **2. PERSONS CONSULTED**

2.1 The Bill is to be published in the *Gazette* for public comment and will simultaneously be distributed to relevant stakeholders, institutions and government departments.

2.2 The Bill has been drafted in close consultation with the Department of Rural Development and Land Reform.

### **3. FINANCIAL IMPLICATIONS**

The only cost that will be incurred at this stage is the cost of publication of the Bill in the *Government Gazette* for public comments, which costs will be defrayed from the Departments budget.

### **4. PARLIAMENTARY PROCEDURE**

4.1 The State Law Advisers and the Department of Human Settlements are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it falls within functional areas listed in Schedule 4 to the said Constitution, namely "Housing".

4.2 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.