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THE PRESIDENCY

No. 1672

19 November 2003

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 29 of 2003: Sectional Titles Amendment Act, 2003.



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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.

(English text signed by the President.)
(Assented to 11 November 2003.)

ACT

To amend the Sectional Titles Act, 1986, so as to substitute a definition and insert another; to repeal redundant provisions; to make certain textual alterations; to make new provision with regard to registration of extensions to schemes and with regard to exclusive use areas; 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, as substituted by section 1 of Act 7 of 1992 and amended by section 1 of Act 15 of 1993 and section 1 of Act 44 of 1997 5

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 words preceding subparagraph (i) of paragraph (b) of the definition of “owner” of the following words:
“immovable property[,] and real rights in immovable property [**and notarial bonds**]—”; and 10

- (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.” 15

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 substituted by 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 substituted by section 4 of Act 63 of 1991 and section 3 of Act 44 of 1997 20

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

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
“(a) a certificate issued by an architect or a land surveyor stating that[—]

- [(i)] the proposed division into sections and common property is not contrary to[—]
- [(aa)] any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law[; or 5
- (bb) **any other current planning or development initiatives initiated by any authority with jurisdiction over the area],**
that may affect the development;
- [(ii) **in respect of matters other than the proposed use, the building to which the scheme relates is not contrary to any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law;** 10
- (iii) **in respect of matters other than buildings, any applicable condition of any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law has been complied with;** 15
- (iv) **the building to which the scheme relates, was erected in accordance with approved building plans;]"; and 20**
- (b) by the deletion in subsection (2) of paragraphs (c) and (d).

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. Section 17 of the principal Act is hereby amended by the substitution for the heading of the following heading: 25
- “**[Dealings with] 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 and substituted by section 17 of Act 44 of 1997

5. Section 24 of the principal Act is hereby amended— 30
- (a) by the substitution for subsection (3) of the following subsection: 30
- “(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 35 approval.”; and
- (b) by the deletion in subsection (6) of paragraph (b).

Amendment of section 25 of Act 95 of 1986, as substituted by section 15 of Act 63 of 1991 and amended by 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— 40
- (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 in subsection (10) after paragraph (d) of the following paragraph: 45
- “(dA) any mortgage bond which may be affected by the right, 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 is attached to—
- (i) each section shown on the sectional plan and its undivided share in the common property; 50
- (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 subsection (1); 55 and”;

- (c) by the substitution in subsection (11) for paragraph (c) of the following paragraph:

“(c) simultaneously with the registration of the sectional plan of extension issue to the developer, his or her successor in title or the body corporate, as the case may be, a certificate of registered sectional title in respect of each section depicted on the sectional plan of extension and its undivided share in the common property, 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 in subsection (15) for paragraph (b) 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 changes.”.

Amendment of section 26 of Act 95 of 1986, as substituted by section 16 of Act 63 of 1991 and amended by 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 in subsection (1) for paragraph (a) 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 in subsection (1) for paragraph (b) 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 in subsection (1) after paragraph (b) of the following paragraphs:

“(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 vests 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 shall, in the prescribed form—

- (i) apply to the registrar for the issuing of a certificate of real right of exclusive use in its favour; and
(ii) submit a certificate of compliance with any law dealing with vesting.

(e) The registrar shall, after consideration of the application in paragraph (d), 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 vests 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 shall, in the prescribed form—

- (i) apply to the registrar for the issuing of a certificate of real right of exclusive use in its favour; and
(ii) submit a certificate to the effect that the provisions of any law in connection with the vesting have been complied with.

(d) The registrar must issue such certificate in the prescribed form.”;

- (e) by addition of the following subsection:

“(7) (a) Any person who holds two or more rights to exclusive use areas or undivided shares 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.

(b) At least one of the exclusive use areas or shares shall remain held by such title deed.”.

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.