

REPUBLIC OF SOUTH AFRICA

SECTIONAL TITLES AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; Bill published in Government
Gazette No. 25217 of 25 July 2003)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 43—2003]

ISBN 0 621 33860 5

No. of copies printed 1 800

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 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** 10
notarial bonds]—”; and

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

“(3A) If a body corporate is unable to obtain a unanimous resolution,
it may, subject to the provisions of subsection (3)(c), approach the court
for relief.” 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
- (bb) **any other current planning or development initiatives initiated by any authority with jurisdiction over the area],**
that may affect the development;
- [(ii)] **in respect of matters other than the proposed use, the building to which the scheme relates is not contrary to any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law;**
- (iii) **in respect of matters other than buildings, any applicable condition of any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law has been complied with;**
- (iv) **the building to which the scheme relates, was erected in accordance with approved building plans;]’; and**
- (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:
- “**[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—
- (a) by the substitution for subsection (3) of the following subsection:

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

“(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;
 - (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); 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. 5

(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— 10

(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. 15

(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. 20

(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. 25

(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— 30

(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. 35

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

- (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. 40

(b) At least one of the exclusive use areas or shares shall remain held by such title deed.”. 50

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: 45

“(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.” 50

Short title

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

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

1. PURPOSE

1.1 The Sectional Titles Amendment Bill, 2003 (hereinafter referred to as “the Bill”), proposes amendments to the Sectional Titles Act, 1986 (Act No. 95 of 1986) (hereinafter referred to as “the Act”), that seek to substitute certain definitions, repeal redundant provisions, make certain textual alterations and make provision with regard to registration of extensions to sectional title schemes and with regard to exclusive use areas.

1.2 The Bill aims at expediting the process of developing sectional title schemes and at cost effectiveness for public benefit.

2. CONTENTS OF BILL

2.1 Clause 1 provides for the amendment of certain definitions for clarity purposes and to provide for recourse to the justice system in appropriate cases.

2.2 Clause 2 provides for the repeal of a redundant section.

2.3 Clause 3 provides for the deletion of certain redundant provisions.

2.4 Clause 4 provides for the substitution of a heading that is incongruous with the provisions of the relevant section.

2.5 Clause 5 provides for the elimination of interpretation problems, the alignment of the relevant provision with the Afrikaans text of the Act, and the repeal of redundant provisions.

2.6 Clause 6 provides for the substitution of a heading that is incongruous with the provisions of the relevant section, the alignment of the relevant section with another related section, the omission of reference to a repealed section, the promotion of gender equality, the substitution of a Latin phrase with its English counterpart, and other consequential amendments.

2.7 Clause 7 provides for technical amendments that are aimed at providing a mechanism for incorporating new conditions into a schedule referred to in section 11(3)(b).

2.8 Clause 8 provides for the disposal of an exclusive use area which remains registered in the name of a person who has ceased to be a member of the body corporate, the promotion of gender equality, other technical amendments as well as consequential amendments.

2.9 Clause 9 provides for technical amendments that are aimed at securing clarity.

2.10 Clause 16 provides for the short title.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- * The Law Society of South Africa.
- * South African Council for Architects.
- * South African Council for Professional and Technical Surveyors.
- * South African Property Owners Association.
- * The Banking Council of South Africa.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. CONSTITUTIONAL IMPLICATIONS

None.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Land Affairs are of the view that the 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 76 of the Constitution applies.