

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 28798 of 12 May 2006)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 8—2006]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Sectional Titles Act, 1986, so as to amend certain definitions; to provide for the registration of a sectional mortgage bond over an exclusive use area; to provide that joint holders of certain rights may apply for a certificate of real rights in respect of their undivided shares in an exclusive use area or a right contemplated in section 25(1) of the Act; to extend the manner in which a body corporate may acquire land for the extension of common property and to provide for the registration thereof; to provide for the deletion of a proviso; to provide for the substitution of references to the repealed Land Survey Act, 1927; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 95 of 1986, as amended by section 1 of Act 63 of 1991, section 1 of Act 7 of 1992, section 1 of Act 15 of 1993, section 1 of Act 44 of 1997, section 1 of Act 29 of 2003 and section 1 of Act 7 of 2005 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 definition of “Chief Surveyor-General” of the following definition:

“**‘Chief Surveyor-General’** means the Chief Surveyor-General appointed in terms of section [1] 2 of the Land Survey Act, [1927 (Act No. 9 of 1927)] 1997 (Act No. 8 of 1997);”;

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

“**‘sectional mortgage bond’** means a mortgage bond hypothecating— 15

(a) a unit or an [undivided share in a unit or] exclusive use area, land or an undivided share in such unit, area or land held under a separate sectional title deed; or

(b) a registered lease or sub-lease of any such unit, exclusive use area or land or an undivided share in [a] such unit, area or land[; or], which when it was entered into, was for a period of not less than 10 years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than 10 years; or 20 25

(c) any other registered real right in or over any such unit or undivided share in a unit or common property or the rights referred to in sections 25 and 27;”;

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

“**‘Surveyor-General’** means a Surveyor-General appointed in terms of section [4] 5 of the Land Survey Act, [1927 (Act No. 9 of 1927)] 1997 (Act No. 8 of 1997);”.

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

2. Section 15B of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) (a) Any person who is—

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- (i) the joint owner of a unit; or
- (ii) the joint holder of a right to an exclusive use area; or
- (iii) the joint holder of a right referred to in section 25(1), held by such person and one or more other persons under one sectional title deed, certificate of real right or notarial deed of cession, as the case may be, may, upon application to the registrar in the prescribed manner, obtain a certificate of registered sectional title or a certificate of real right in the prescribed form in respect of his or her undivided share in such unit, right to an exclusive use area or right referred to in section 25(1).

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(b) No transfer or cession of a fraction of an undivided share—

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- (i) in a unit; or
- (ii) right to an exclusive use area; or
- (iii) right referred to in section 25(1), and no hypothecation or lease of the whole or fraction of such undivided share shall be registered in a deeds registry unless a certificate of registered sectional title or certificate of real right in respect of such undivided share is produced to the registrar.”.

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Amendment of section 26 of Act 95 of 1986, as amended by section 16 of Act 63 of 1991, section 19 of Act 44 of 1997 and section 7 of Act 29 of 2003

3. Section 26 of the principal Act is hereby amended—

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

“(1) A body corporate, authorized thereto in writing by all of its members, may purchase or otherwise acquire land to extend the common property and such land must be registered in the name of the body corporate in terms of this Act and the Deeds Registries Act.”; and

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

“(2) Land purchased or otherwise acquired by and registered in the name of [by] a body corporate in terms of subsection (1) shall be deemed to be owned by the owners of the sections in the building concerned in the same proportion as their participation quota as reflected on the relevant sectional plan.”.

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Amendment of section 36 of Act 95 of 1986, as amended by section 9 of Act 7 of 1992 and section 4 of Act 7 of 2005

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

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Substitution of expression

5. The principal Act is hereby amended by the substitution for the expression “Land Survey Act, 1927 (Act No. 9 of 1927)”, wherever it occurs, of the expression “Land Survey Act, 1997 (Act No. 8 of 1997)”.

Short title

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6. This Act is called the Sectional Titles Amendment Act, 2006.

MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES AMENDMENT BILL, 2006

1. PURPOSE

The Sectional Titles Amendment Bill, 2006 (hereinafter referred to as “the Bill”), proposes certain amendments to the Sectional Titles Act, 1986 (Act No. 95 of 1986) (hereinafter referred to as “the Act”).

2. OBJECTS OF THE BILL

2.1 Clause 1 of the Bill proposes certain consequential amendments to the definitions of “Chief Surveyor-General” and “Surveyor-General” pursuant to the repeal of the Land Survey Act, 1927 (Act No. 9 of 1927), in order to reflect the correct statutory position. It also proposes an amendment to the definition of “sectional mortgage bond”. Exclusive use areas are part of the common property set aside for the exclusive use by owners of sections in a sectional title scheme. Despite the connection between the exclusive use areas and the relevant sections, the Act does not provide for the registration of sectional mortgage bonds over exclusive use areas. The proposed amendment seeks to extend the registration of sectional mortgage bonds to exclusive use areas and undivided shares in exclusive use areas. It also seeks to harmonise the periods between registered and unregistered leases or subleases and eliminates the perception that a short-term lease is receptive to the registration of a sectional mortgage bond.

2.2 Section 15B(5) of the Act grants to the joint owner of a unit the right to apply to the registrar of deeds for a certificate of registered sectional title in respect of such owner’s undivided share in the unit. In view of the connection between exclusive use areas and their relevant units, clause 2 of the Bill proposes that this right also be extended to the joint holder of a right to an exclusive use area or a right referred to in section 25(1) of the Act. Section 25(1) entitles a developer to reserve the right in a sectional plan to erect, for his personal account, a further building or buildings, a horizontal extension of an existing building or a vertical extension of an existing building on a specified part of the common property. The developer has the right to divide the building or buildings into a section or sections and common property and to confer the right of exclusive use over parts of the common property upon the owner or owners of the sections. It is also proposed that joint owners may apply either for a registered sectional title or a certificate of real right.

2.3.1 Section 26(1) of the Act empowers the body corporate to purchase land to extend the common property but does not provide for the acquisition of land in any other manner. Clause 3(a) of the Bill seeks to empower the body corporate to also acquire land otherwise, for example, by donation, exchange or bequest. Land acquired by the body corporate must be registered in the name of the body corporate.

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

2.4 When the Act was passed by Parliament in 1986, the definition of “owner” provided, inter alia, that the “owner” was the person (including the State) by whom the unit was held under a lease registered in a deeds registry for a period of ninety-nine years or longer. The definition has since been amended on various occasions but, unfortunately, the proviso to section 36(2) has not been amended accordingly. The existing definition of “owner” does not provide for ownership by way of a lease and the proviso which still refers to a lease of a unit contemplated by paragraph (b) of the original definition of “owner”, has thus become obsolete. The proposal in clause 4 of the Bill seeks to rectify the situation by deleting the proviso to section 36(2) of the Act.

2.5 The Act contains references to the Land Survey Act, 1927 (Act No. 9 of 1927), which was repealed by the Land Survey Act, 1997 (Act No. 8 of 1997). The proposal in clause 5 of the Bill seeks to reflect the correct statutory position.

2.6 Clause 6 of the Bill contains the short title.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Law Society of South Africa
 The South African Council for the Architectural Profession
 The South African Council for Professional and Technical Surveyors
 The South African Property Owners Association
 The Banking Council of South Africa
 The Institute of Estate Agents of South Africa
 The South African Local Government Association
 Department of Housing
 Department of Social Development
 Department of Justice and Constitutional Development
 National Association of Managing Agents
 The public

5. CONSTITUTIONAL IMPLICATIONS

There are no constitutional implications.

6. COMMUNICATION IMPLICATIONS

To be undertaken by the Department of Land Affairs.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Land Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

7.2 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.