

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 1172

7 December 2010

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

No. 11 of 2010: Sectional Titles Amendment Act, 2010.



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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 3 December 2010.)

ACT

To amend the Sectional Titles Act, 1986, so as to amend certain definitions; to redefine the boundaries between certain sections and common property; to regulate the substitution of bonds registered in respect of different pieces of land shown on the sectional plan; to provide for the issuing of certificates of real rights of extension and certificates of real rights of exclusive use areas at the opening of a sectional title register; to provide for the issuing of more than one certificate of real rights of extension and more than one certificate of real rights of exclusive use areas; to further regulate the cancellation of registered sectional plans; to provide for the issuing of a certificate of registered sectional title in respect of a fraction of an undivided share in a section; to provide for a notice to a mortgagee for consent to proposed extensions to a section in a scheme; to provide for the extension of a scheme by the addition of rights to exclusive use areas only; to provide for a right of extension of a scheme in respect of a building or buildings that already exist; to provide for the deletion of a provision pertaining to certain administrative expenses payable by a developer; to provide for the deletion of a superfluous reference to urban immovable property; to provide for the production of a certificate by a conveyancer regarding the payment of moneys in respect of the cession of real rights; to provide for a cession of real rights to exclusive use areas within a specific time for the benefit of owners of sections; to further provide for the vesting of rights to exclusive use areas where an owner ceases to be a member of a body corporate; to provide for the cancellation of exclusive use area rights with the written consent of the mortgagee and holder of a registered real right; to further provide for the regulation of consent of bondholders for the registration of servitudes; to provide for the payment of certain contributions by a developer towards the defrayal of certain rates and taxes and the maintenance of common property; to further provide for liability for payment of contributions where ownership in units changes; to provide for the levying of special contributions by the trustees of a body corporate; to provide for the use of exclusive use areas for purposes depicted on the registered sectional plan only; to substitute obsolete references; to delete and amend certain incompatible provisions no longer applicable; 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, Proclamation R9 of 31 January 1997; section 1 of Act 29 of 2003, section 1 of Act 7 of 2005 and section 1 of Act 6 of 2006

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 paragraph (a) of the definition of **“developer”** of the following paragraph:
 - “(a) for the purposes of sections 4(3), 10 and 15B(3)(c), also the agent of any such person or his or her successor in title, or any other person acting on behalf of any of them; and”;
- (b) by the substitution in subsection (1) for the definition of **“Minister”** of the following definition:
 - “**“Minister”**” means the Minister of [Land Affairs] Rural Development and Land Reform;”;
- (c) by the substitution in subsection (1) for paragraph (a) of the definition of **“owner”** of the following paragraph:
 - “(a) immovable property, subject to paragraph (b), the person registered as owner or holder thereof and includes the trustee in an insolvent estate, [a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act, 1966 (Act 28 of 1966),] the liquidator of a company or close corporation which is an owner, and the executor of an owner who has died, or the representative, recognised by law, of an owner who is a minor or of unsound mind or is otherwise under a disability, if such trustee, liquidator, executor or representative is acting within the scope of his or her authority;”;
- (d) by the substitution for subsection (3A) of the following subsection:
 - “(3A) If a body corporate is unable to obtain a unanimous resolution, it may [subject to] notwithstanding the provisions of subsection (3)(c), approach the court for relief.”.

Amendment of section 5 of Act 95 of 1986, as amended by section 3 of Act 63 of 1991, section 11 of Act 7 of 1992 and section 5 of Act 6 of 2006

2. Section 5 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:
- “(a) by reference to the floors, walls and ceilings thereof, or as may be prescribed; Provided that any window, door or other structure which divides a section from another section or from common property, shall be considered to form part of such floor, wall or ceiling; and”.

Amendment of section 11 of Act 95 of 1986, as amended by section 5 of Act 63 of 1991, section 3 of Act 7 of 1992 and section 7 of Act 44 of 1997

3. Section 11 of the principal Act is hereby amended—
- (a) by the substitution in subsection (3) for paragraph (d) of the following paragraph:
 - “(d) any mortgage bond to which the land may be subject, together with the consent of the mortgagee to the opening of the sectional title register and to the endorsement of such bond to the effect that it attaches to—
 - (i) the sections and common property shown on the sectional plan;
 - (ii) the certificate or certificates of real right in respect of a right reserved [by him] in terms of section 25(1); and
 - (iii) the certificate or certificates of real right in respect of a right of exclusive use as contemplated in section 27(1);
 Provided that [section 40 (5) of the Deeds Registries Act shall apply with the necessary changes to any bond which] where a bond is registered against one or more pieces of land shown on the sectional plan, all the land shown on the sectional plan may, upon

written application by the developer and with the written consent of the mortgagee, be substituted for the land originally mortgaged under the bond and if different pieces of land shown on the sectional plan are mortgaged under different bonds, the sectional plan may not be registered unless the bonds are cancelled.”; and

(b) by the insertion in subsection (3) after paragraph (fA) of the following paragraphs: 5

“(fB) the certificate or certificates of real right in respect of any right which has or have been reserved by him or her in terms of section 25(1);

(fC) the certificate or certificates of real right in respect of any right of exclusive use if a condition, as contemplated in section 27(1), has been imposed; and”.

Amendment of section 12 of Act 95 of 1986, as amended by section 6 of Act 63 of 1991

4. Section 12 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs, respectively: 15

“(e) issue to the developer, in the prescribed form, a certificate or certificates of real right in respect of any reservation made [by him] in terms of section 25(1), subject to any mortgage bond registered against the title deed of the land; 20

(f) issue to the developer, in the prescribed form, a certificate or certificates of real right in respect of a right of exclusive use as contemplated in section 27(1), subject to any mortgage bond registered against the title deed of the land; and”.

Amendment of section 14 of Act 95 of 1986, as amended by section 8 of Act 63 of 1991 and section 4 of Act 7 of 1992

5. Section 14 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) A registered sectional plan shall, subject to the provisions of subsection (6) and [section] sections 17(6), 48 and 49, only be cancelled by an order of the Court, and the registrar shall give effect to any such cancellation by making the necessary endorsements and entries in his or her records, and shall notify the Surveyor-General, who shall cancel the original sectional plan and the deeds office copy thereof.”. 30

Amendment of section 15B of Act 95 of 1986, as amended by section 10 of Act 44 of 1997 and section 2 of Act 6 of 2006

6. Section 15B of the principal Act is hereby amended by the insertion of the following subsection after subsection (5):

“(5A) Subsection (5) shall apply, with the necessary changes, to any person who is the owner of a unit or the owner of a share in such unit and who contemplates obtaining a certificate of registered sectional title of any fraction of his or her undivided share in such unit.”. 40

Amendment of section 24 of Act 95 of 1986, as amended by section 14 of Act 63 of 1991, section 17 of Act 44 of 1997, section 5 of Act 29 of 2003 and section 2 of Act 7 of 2005

7. Section 24 of the principal Act is hereby amended—

(a) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) in the case of the floor area of the section in question being increased by the extension, a revised schedule, in substitution for the schedule referred to in section [7(2)(b)] 5(3)(g), reflecting the participation quotas of all the sections as modified after taking the increased floor area of the section in question into account.”; 50