

REPUBLIC OF SOUTH AFRICA

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# SECTIONAL TITLES AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill  
and prior notice of its introduction published in Government Gazette No. 43722 of  
18 September 2020)  
(The English text is the official text of the Bill)*

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(MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT)

**[B 31—2020]**

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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 developer to answer questions put to the developer by the agents of the lessees; to provide that a certificate issued by an architect or a land surveyor must also comply with section 26(2) of the Spatial Planning and Land Use Management Act, 2013; to further provide for the amendment of sectional plans in respect of exclusive use areas; to further provide for the amendment and cancellation of a sectional plan upon an order of the court; to provide for the noting of a title deed in respect of the lapsing of a reservation in terms of section 25; to provide for a lease of part of the common property with the consent of the holders of registered real rights; to amend the provisions relating to the alienation of common property; to further provide for the cancellation of a mortgaged section and mortgaged exclusive use area; to also provide for a developer to submit a plan for subdivision or consolidation to the Surveyor-General for approval to subdivide, consolidate and to extend a section; to extend the registration of subdivision of a section, the consolidation of sections, and the extension of sections to a developer; to provide for the filing of replacement documentation in respect of lost or destroyed documentation; to amend the provisions relating to the extension of a scheme; to amend the provisions relating to participation quotas of sections; to regulate the membership of the sectional titles regulations board; to amend the transitional provisions; and to provide for matters connected therewith.

**B**E 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, sections 1 and 11 of Act 7 of 1992, section 1 of Act 15 of 1993, section 1 of Act 44 of 1997, Proclamation No. R. 9 of 1997, section 1 of Act 29 of 2003, section 1 of Act 7 of 2005, section 1 of Act 6 of 2006, section 1 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 1 of Act 33 of 2013 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 for the definition of “exclusive use area” of the following definition: 10

“**‘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 or by the occupant or occupants thereof recognised by law, as contemplated in this Act;” and 15

(b) by the substitution for the definition of “Sectional Titles Schemes Management Act” of the following definition:

“ ‘Sectional Titles Schemes Management Act’ means the Sectional Titles Schemes Management Act, [2010] 2011 (Act No. 8 of 2011);”.

**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, sections 2 and 30 of Act 44 of 1997, section 2 of Act 29 of 2003 and section 2 of Act 33 of 2013**

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2. Section 4 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) a meeting contemplated in paragraph (a)(i) has been held and the developer has been available thereat to provide the particulars contemplated in the said paragraph, and has answered all reasonable questions put to the developer by the lessees or their respective agents present: Provided that a developer need not comply with this subsection if all such lessees have stated in writing that they are aware of their rights which shall also be set out in such statement and that they do not wish to purchase the proposed units which they occupy and a conveyancer has certified in writing that such statements have been received in respect of all the units in question: Provided further that a share block company applying for the approval of a development scheme need not comply with the requirements of this subsection if that share block company has, within a period of two years before such application, already complied with section 11A of the Share Blocks Control Act, 1980 (Act No. 59 of 1980).”.

**Amendment of section 7 of Act 95 of 1986, as amended by section 4 of Act 63 of 1991, section 3 of Act 44 of 1997 and section 3 of Act 29 of 2003**

3. Section 7 of the principal Act is hereby amended 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 the proposed division into sections and common property—  
 (i) 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, that may affect the development; and  
 (ii) complies with section 26(2) of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);”.

**Amendment of section 14 of Act 95 of 1986, as amended by section 8 of Act 63 of 1991, section 4 of Act 7 of 1992, section 5 of Act 11 of 2010 and section 3 of Act 33 of 2013**

4. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) If in the opinion of the Surveyor-General any person could be prejudiced by an incorrect sectional plan, he or she shall advise the registrar as to which sections or exclusive use areas are affected by any such defect in question, and thereafter no transfer of such section and its undivided share in the common property or the registration of a real right therein, or the cession of an exclusive use area, shall be registered until the defect in the sectional plan has been rectified, unless the registrar is satisfied that the delay in causing the defective sectional plan to be rectified will cause undue hardship and the person in whose favour transfer of the section and its undivided share in the common property or of a real right therein, or cession of an exclusive use area, is to be registered, consents in writing to the transfer or other registration being effected prior to the rectification of the defect.”;

(b) by the substitution for subsection (5) of the following subsection:

“(5) The Surveyor-General shall advise the registrar and the local authority of any alteration, amendment or substitution of a sectional plan in terms of subsection (1) which affects the description or extent of any section or exclusive use area, and thereupon the registrar shall make the necessary endorsements reflecting any change of description or extent upon the deeds registry copy of the sectional title deed and upon any other registered document affected by such change, and shall likewise

endorse the owner's or holder's copy of that sectional title deed or any such other registered document whenever subsequently lodged at the deeds registry for any purpose."; and

- (c) by the addition in subsection (8) of the following paragraph, the existing subsection becoming paragraph (a):

"(b) The provisions of section 49(3) to 49(5) apply, with the necessary changes, in instances where a body corporate is in existence upon cancellation of the sectional plan by an order of the Court."

**Amendment of section 15B of Act 95 of 1986, as amended by section 10 of Act 63 of 1991, section 10 of Act 44 of 1997, section 2 of Act 6 of 2006, section 6 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 4 of Act 33 of 2013**

5. Section 15B of the principal Act is hereby amended by the deletion in subsection (1) of the word "and" at the end of paragraph (c), the insertion of the word "and" at the end of paragraph (d) and the addition of the following paragraph:

- "(e) the registrar must note the lapsing on the title deed of the right so reserved, if available, where a right in respect of a reservation in terms of section 25 has lapsed, on application by the developer or by the body corporate in instances where the developer is no longer in existence: Provided that where the title deed of the right is not available, an affidavit must be submitted by the developer or by the body corporate, as the case may be, to the effect that the title deed to such right is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original title deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon."

**Amendment of section 17 of Act 95 of 1986, as amended by section 11 of Act 63 of 1991, section 11 of Act 44 of 1997, section 53 of Act 24 of 2003, section 4 of Act 29 of 2003, section 1 of Act 11 of 2005, section 5 of Act 6 of 2006, section 20 of Act 8 of 2011 and section 5 of Act 33 of 2013**

6. Section 17 of the principal Act is hereby amended—

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

"(b) Where pursuant to subsection (1) it is sought to let land which forms part of the common property or a portion thereof on which a section or part of a section is erected, the registrar shall not register the lease, unless it is made subject to any right which the owner of the section or part of the section may have, as well as the rights of holders of real rights in terms of sections 25 and 27."

- (b) by the substitution for subsection (4B) of the following subsection:

"(4B) (a) Where in terms of subsection (1) it is sought to alienate a portion of land on which an exclusive use area or part thereof is registered, the registrar shall not register the transfer, unless the registration of the exclusive use area [or part thereof] has been cancelled with the written consent of the holder.

(b) The registrar shall notify the Surveyor-General and the local authority when the registration of an exclusive use area [or part thereof] has been cancelled in terms of paragraph (a), and on receipt of such a notice the Surveyor-General shall make the necessary amendments on the original sectional plan and on the deeds registry copy of the sectional plan."

- (c) by the substitution for subsection (4C) of the following subsection:

"(4C) [The provisions of subsection (4B) shall apply with the necessary changes where,] Where in terms of subsection (1), it is sought to alienate a portion of land on which a real right of extension in terms of section [25] 25(1) or any part of such right is registered, the registrar shall not register the transfer, unless the registration of such real right or part thereof has been cancelled with the written consent of the holder thereof."

**Substitution of section 18 of Act 95 of 1986, as amended by section 6 of Act 33 of 2013**

7. The following section is hereby substituted for section 18 of the principal Act:

**“Transfer of mortgaged unit, undivided share, common property or land, and cession of mortgaged lease or real right**

**18.** The provisions of sections 56 and 57 of the Deeds Registries Act shall apply with the necessary changes to the transfer of any mortgaged unit or undivided share in a unit, the cession of any mortgaged lease of a unit or undivided share in a unit, the cession of any mortgaged real right in or over a unit or an undivided share in a unit, the cession of any mortgaged real right under sections 25 and 27 of this Act or an undivided share therein, **[and]** the transfer under section 17 of this Act of any mortgaged common property or land or an undivided share therein and the cancellation under section 17 of any mortgaged section and exclusive use area, and real right under section 25.”.

**Amendment of section 21 of Act 95 of 1986, as amended by section 14 of Act 44 of 1997 and section 20 of Act 8 of 2011**

8. Section 21 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The provisions of subsection (1) apply with the necessary changes where a developer, prior to the establishment of a body corporate, intends to subdivide his or her section or to consolidate two or more sections registered in his or her name.”.

**Amendment of section 22 of Act 95 of 1986, as amended by section 12 of Act 63 of 1991 and section 15 of Act 44 of 1997**

9. Section 22 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) The provisions of subsection (1) apply with the necessary changes where a developer, prior to the establishment of a body corporate, wishes to register a sectional plan of subdivision of a section.”;

(b) by the insertion in subsection (2) of the following paragraph after paragraph (c):

“(cA) any lease or other deed embodying any other real right registered against the section at the time of subdivision, if available: Provided that where the lease or other deed embodying the real right is not available, an affidavit must be submitted by the owner or developer, as the case may be, to the effect that the lease or other deed is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original lease or other deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon;”;

(c) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) certificates of registered sectional title in the prescribed form for each of the new sections and their undivided shares in the common property created by the subdivision, made out in favour of the owner [or, in the case of a partition, in favour of the persons entitled thereto in terms of the partition agreement];”;

(d) by the deletion in subsection (2) of paragraph (e); and

(e) by the insertion after subsection (2) of the following subsection:

“(2A) (a) Where an application as contemplated in subsection (1) is made by a developer, such application must also be accompanied by an affidavit by such developer to the effect that at the date of the application, no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated but not yet registered in the name of the acquirer, the